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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 RICHARD SUEN, ROUND SQUARE
COMPANY LTD,

9 Plaintiff,

10 vs.

11 LAS VEGAS SANDS CORP.,

12 Defendant.

CASE#: 04-A-493744

DEPT. XXXII

13
14 BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
15 MONDAY, FEBRUARY 25, 2019

16 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

17 APPEARANCES:

18 For the Plaintiff:

TODD L. BICE, ESQ.
JAMES J. PISANELLI, ESQ.
JORDAN T. SMITH, ESQ.
JOHN. A. O'MALLEY, ESQ.
SPENCER PERSSON, ESQ.

20 For the Defendant:

JAMES J. JIMMERSON, ESQ.
RICHARD A. SAUBER, ESQ.
LAWRENCE A. JACOBS, ESQ.
STEPHEN J. PEEK, ESQ.

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25 RECORDED BY: CARRIE HANSEN, COURT RECORDER

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<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		
<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		
<u>COURT’S EXHIBIT</u>	<u>MARKED</u>	<u>RECEIVED</u>
Letter	23	23
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1 Las Vegas, Nevada, Monday, February 25, 2019

2

3 [Case called at 9:10 a.m.]

4 THE COURT: Go on the record, please. Call the case.

5 THE CLERK: Case number A493744, Richard Suen, Round
6 Square Company v. Las Vegas Sands Corp.

7 THE COURT: Do you have an appetite to make appearances
8 again?

9 MR. O'MALLEY: Good morning, Your Honor. John
10 O'Malley, for the Plaintiff.

11 MR. BICE: Todd Bice for the Plaintiff.

12 MR. SMITH: Jordan Smith for the Plaintiff.

13 MR. PISANELLI: James Pisanelli for the Plaintiff.

14 MR. JIMMERSON: Jim Jimmerson for the good guys.

15 MR. SAUBER: And Richard Sauber for the Defendant.

16 MR. JIMMERSON: We also note the presence of our general
17 counsel, Mr. Jacobs, Your Honor, Lon Jacobs.

18 THE COURT: Are you representing an automobile repair
19 establishment?

20 MR. JIMMERSON: Hopefully, I have something better than
21 that, Judge.

22 THE COURT: Pep Boys. Okay. Carrie gave me a note and
23 you know, when they give you notes you got to make sure you do
24 something with it before you throw them away. So here's what it says.
25 Please put on the record that the Realtime reporter's transcript will be

1 the official court record. Thanks, Carrie. You want to tell them what
2 that's all about, please?

3 THE COURT RECORDER: Yeah, so when we had our meeting
4 last week, you guys indicated that you wanted to hire a Realtime reporter
5 to do transcripts for the trial. And so I had to verify and make sure that
6 their transcripts can be the official court record. And I took it to my
7 supervisor and she said as long as the Judge puts that on the record,
8 that it is allowed. So if you guys -- do you want to go ahead and do that,
9 then that will be fine. But I just need to know because I need to let the
10 person I have lined up to do the transcripts go, if they're going to do the
11 Realtime reporters. I just need to find out.

12 MR. O'MALLEY: Well, thank you, very much. I appreciate
13 that. There have been communications back and forth between us. I
14 don't think they're entirely resolved yet, but they're getting close. So
15 once we've made our decision, Mr. Jimmerson will communicate with
16 you directly, Carrie, if that's all right. And let you know where we're at.

17 MR. JIMMERSON: And I would anticipate that they'll be
18 concluded by tomorrow.

19 THE COURT RECORDER: Okay, thank you.

20 THE COURT: And since it requires an order from me, right?

21 THE COURT RECORDER: Yes.

22 MR. JIMMERSON: It will, Your Honor.

23 THE COURT: Everybody agrees that I should issue such an
24 order?

25 MR. O'MALLEY: Yes, Your Honor.

1 THE COURT: Mr. Jimmerson?

2 MR. JIMMERSON: Yes, Your Honor.

3 THE COURT: Okay. Well, as Troy Gregory used to say, that
4 will be the order. Anybody know who Troy Gregory was?

5 MR. O'MALLEY: I do.

6 THE COURT: Oh, good. All right. And while we're on -- at
7 least we're having some fun here today, so far. Of course, we'll segue
8 into seriousness real soon. But since you started it with your comment,
9 let me ask you, what's everybody doing a week from today?

10 On that note, I wanted to let you know, over the weekend, I
11 started thinking about how we're -- another component of the jury
12 selection. And what I'm going to do is take the questionnaire and
13 compare it to the notes that I shared with you in our off the record
14 meeting, where I told you the things I normally ask. If the jury
15 questionnaire already asked it, I might say that, and sort of skip over it.
16 In other words, I have to somehow incorporate the questionnaire, itself,
17 into what I say to the jurors, because I don't want to make it look like I'm
18 asking them something that they've already been asked, and create an
19 appearance, even, that I don't know that's in the questionnaire. That
20 would look like -- that would make it appear as though I didn't read the
21 questionnaire that I signed.

22 Or that I don't know what I'm doing or anything like that. So
23 I'm going to make sure that I -- probably by question number, if I
24 reference part of the questionnaire, I might say something, like well, jury
25 question number whatever. You were asked this. I normally ask about

1 this, but I think the jury questionnaire has already answered it. But if
2 there's something more that you need to supplement on this, raise your
3 hand, or something like that. I might do something like that, along the
4 way.

5 And, okay.

6 MR. O'MALLEY: May I ask, Your Honor -- can I ask a
7 procedural question about jury selection since -- since we're on the topic,
8 just briefly. I neglected to ask it when we last talked earlier last week.
9 When the venire is here and 25 will be selected to go into the box area.

10 THE COURT: 25 on that side of the room.

11 MR. O'MALLEY: Right. Will they be selected by badge
12 number, or by juror ID number, or randomly? Or how does that first cut
13 go?

14 THE COURT: You want to tell them?

15 THE CLERK: Badge number, so they just kind of line up by
16 number, starting from the lowest to the greatest. And then they will
17 interchange. So when you pull one out, the next badge number from the
18 batch.

19 MR. O'MALLEY: Thanks, and it's badge number, not juror
20 number?

21 THE CLERK: Correct.

22 MR. O'MALLEY: Okay, thank you.

23 THE COURT: And just a friendly reminder, we talked a lot
24 about jury selection and things having to do with the trial, consistent
25 with a letter that I sent you. We did all of that off the record. So if

1 there's anything about that, that we should memorialize on the record,
2 then it -- you know, let's -- if either side wants to do something like that,
3 that's fine. In other words, we did come up with the idea of 15 jurors.
4 That's eight deliberating jurors, plus seven alternates. Susceptible to a
5 potential stipulation that the parties could enter into, to have more than
6 eight deliberate. You know, and assuming that we have -- the
7 Constitution says 75 percent in a civil case arrive at a verdict. So the
8 number most likely would have to be divisible with 75 percent. But it's
9 important to note that I reiterated a few times, and we all seemed to
10 agree, that again, it's 15 in a seven week trial. That will give us comfort
11 room and have plenty of alternates. But it would be eight deliberating
12 jurors and seven alternates. Again, unless we make it all the way
13 through, and either all, or a lot of them are all here towards the end, if
14 the lawyers mutually stipulate to say something like, well, what did we
15 do last time? Twelve was it twelve?

16 MR. JIMMERSON: I think we did 12, Your Honor.

17 THE COURT: Yeah, if that happens again, great. I'm here to
18 serve. But it's important to note that that would only happen by way of
19 mutual stipulation and agreement. If either side says, you know we'll
20 just go with the eight, no harm, no foul, no -- nothing held against that
21 side, because if we're starting with that presumption, or agreement, or
22 fact, whatever way you want to put it, eight deliberating jurors, seven
23 alternates. If the parties want to use more and divide by the 75 percent, I
24 guess we can do that, like we did last time. But that's not something that
25 I'm required. It's just -- it's available as an option. Anything on that?

1 Okay, just that's important to probably put on the record.

2 Okay, all right. We all think in different ways, and this
3 morning I thought to myself, maybe today, don't do what you normally
4 do. You know, don't go in there and give a 30 minute soliloquy,
5 because, you know, some of these people that fly from D.C. might get
6 tired of it. So, but then, unfortunately, something happened to me on
7 the way to the courthouse. That's why I was seven minutes late. I ran
8 into Bill Terry this morning. Okay, and some people here know who Bill
9 Terry is. And the problem is, and it's a good one, every time I see Bill, I
10 know it's going to be a 10 or 15 minute time together. And that's why I
11 was about seven minutes late. Because Bill and I had probably about 50
12 cases against each other, if you can believe it, over 17 years.

13 And I mean, we fought like cats and dogs every time we did
14 these little trials, but it turns out we made best friends. And he actually
15 spoke for me when I was invested. And he told the story about the
16 cartoon where there was a -- a wolf and a dog. And, you know, they --
17 they would have a time clock and a card, and they would punch in. And
18 then they would fight like a wolf and a dog. I guess the dog was trying
19 to guard sheep. I don't remember the cartoon so much. But anyway he
20 told this story. And then they would clock out after fighting, you know,
21 because the wolf wants to eat the sheep, and the dog wants to protect
22 the sheep. They would clock out and they would just go to lunch or
23 dinner, or hang out, or walk around together and be best friends. And
24 that's the way Bill and I actually conducted ourselves. So whenever I see
25 him, you know, I know, like I say, it's going to a little time.

1 But it occurred to me, that in light of the recent emailing that
2 occurred over the weekend and this, you know, underlying issue about
3 the response that was filed by the Plaintiffs, that it just brings up that
4 issue. That we're always welcome, I think to respectfully take positions
5 and essentially fight with each other, but we always want to try and do
6 that in a professional way. And it's not required that when we walk out
7 of court, or when this is over, you all stay friends. It would be great if
8 you would, but, you know, I think that whole philosophy -- it's funny I
9 would run into Bill Terry, when I see, you know, a weekend just
10 happened, where I did offer my home phone number by the way, and
11 my personal email address to everyone. I actually thought, maybe
12 Friday night or Saturday, the phone would ring, or the email would
13 come. But it didn't, as far as I know. Unless you did try to call and I
14 wasn't there. But anyway. We'll resolve the issue having to do with the
15 position that's been taken, that's relevant to our motion practice today,
16 having to do with deposing or not deposing Mr. Adelson.

17 And so what I want to try and do then is I do have some
18 preliminary thoughts that I could hold back, and just listen to all of the
19 argument. But I think that the general consensus normally is that if I
20 think something based upon, you know, reading everything, you'd want
21 me to share it with you. So I'll do that . Unless somebody says you
22 don't want that.

23 All right. Okay, so here we go. I want to start -- I think the
24 best thing to do is to start with the structural sort of, you know, the
25 construct having to do with dealing with this issue of Mr. Adelson. And I

1 probably need to do that right off the bat, because we're on the court
2 record right now, in a public court hearing, as far as I understand it. I
3 mean that's no confidentiality order sealing of this motion today that I
4 am aware of. Nor was I asked to do that specifically. So whether it's
5 nobody in the courtroom, whether it's the one media member who was
6 here last week, or whether it's some of the 140 or so we got last time.
7 You know, it's a public -- right now this is all public, anybody can see it
8 or hear it.

9 So here's what I'm thinking. And I don't know if either side is
10 going to be happy with this. But this is what I think the best way to do is
11 this. And it is consistent with the way I've done this before on multiple
12 occasions over the eight years I've been here. So here we go. If a
13 lawyer who needs time to do something, or provides a reason for maybe
14 not being diligent comes to court and says, look, Judge, it's because of
15 some physical disability issue, or if a client represented by a lawyer or
16 not. You know, that if someone comes into Court and wants to, for some
17 reason, call upon their personal physical or mental issues, I have, and it
18 probably took a couple of years to get around to this, and it probably
19 was the result of running around here talking to Tim Williams and Mark
20 Denton, and all the others that I talk to.

21 What I do is I think it makes sense, is I will always proceed
22 with a view towards trying to protect from the public record the specific
23 medical facts and circumstances that the lawyer who comes to court and
24 says, I'm sorry, I missed some deadlines, or I didn't provide this
25 discovery, or I need a trial continuance.

1 But, you know I have these -- this is what I have. You know,
2 some personal medical issue. Or even mental health type thing. You
3 know, I just got divorced and I had to do this and that, and you know,
4 and this is what happened to me. And I'm getting counseling. You
5 know, whatever. I've had lawyers do that, too. Or litigants.

6 So again, what I always try to do, and I think it make sense is
7 protect the specifics of the condition or the medical issue, or whatever it
8 may be. But basically that's it. The rest of the argument, I think is fair
9 game, given that the balance here is that we protect the specifics of the
10 condition or conditions, or situation. And I did see the email exchange.
11 It's not part of our records, so, you know, if somebody wants to make it
12 part of the record, I guess we could. But there's an email exchange that
13 occurred over the weekend.

14 I'm looking at an email from Mr. Bice Saturday, February
15 23rd at 6:08 p.m. to Mr. Jimmerson and to my law clerk, and to others.
16 And in there, of course, I see it's crystalized now, that the Plaintiff's
17 position is that their opposition brief is -- is fine, and the -- in other
18 words, it doesn't run afoul of any court order or an agreement, or any
19 confidentiality philosophy or anything else. And I know that at least
20 going into the weekend, the Defense position was well, can you sort of
21 unfile it, and file it in a confidential way, or otherwise pull it off Odyssey,
22 or out of the public domain, whatever way you want to put it.

23 So looking at this email chain, and Mr. Bice says there on
24 Saturday at 6:08 p.m. that the brief is proper. We're not going to unfile
25 our opposition. But you do say something in there that I think speaks to

1 where I'm going better probably than I could even say. And that is that
2 the underlying concern in this whole area of sealing, unsealing, or
3 confidentiality, or that sort of thing, is and I'm looking at the second
4 paragraph here. So that the public can have confidence that the laws are
5 being equally and fairly applied regardless of the litigant's stature. I
6 don't think I could say it any better than that.

7 This is consistent with what I'm trying to say. I think that it's
8 important to start with, probably as a guy like Alan Dershowitz even
9 would agree to, at least most of the time. The courtroom is a public
10 courtroom. And it's designed that way, I think first and foremost, to
11 allow the public, who elected me, to have confidence that the laws are
12 equally and fairly applied in the room here. And so this idea of
13 protecting individual privacy interest and some medical condition, that if
14 known, could provide some embarrassment, uncomfortable sort of
15 feelings or, you know, just doesn't feel right, it's not relevant -- the
16 underlying condition is not so relevant. You know, so you protect that in
17 every way you can. Meaning, pleadings and in open court. But that's
18 where you stop, and you do allow the issue, whether it's a famous
19 person, or not, you know, the issue of their position that they're unable
20 to -- they're unavailable. They're unable to be deposed, or maybe even
21 unavailable for trial.

22 You know, whether it is someone who is well-known or
23 whether it's, you know, the pro per who you're surprised to see show up.
24 Same -- I think it's the same rules for everyone in the courtroom. And,
25 you know, if a position is taken that I can't participate, then we take that

1 up. But we don't -- I don't think we should seal that issue or keep that
2 issue confidential. That's what I think going into this. And I know Mr.
3 Jimmerson, Mr. Sauber, you might disagree with that. I could change
4 my mind, I imagine, although I really think it's important to keep the
5 room open. So what I'm saying is the fact that Mr. Adelson will take the
6 position through a doctor that he's unable to participate. In a general
7 sense, court's deal with that kind of stuff all the time. And I don't think I
8 should -- I don't think I should say well, now, wait a second. You know, if
9 it's Sheldon Adelson, or if it's Steve Wynn, or if it's Donald Trump, or
10 whoever it is, I need to take that differently. You know, or any other
11 public figure, I should probably say better. I don't know that being a
12 public figure really makes it so now you enjoy some extra special
13 treatment to have more of a confidential court hearing. Just what I think.
14 And I know that's important because you have me.

15 So that would be the construct I'd go into this with, unless
16 somebody convinces me not to do that. In other words, I agree that the
17 doctor's note and the specific reasons, whether it's in the note or in a
18 pleading, I mean the specific conditions that are mentioned in there.
19 And we all know what they are, because we all have the note. We all
20 have the note, right. So those are all, I think, fairly protected, sealed, just
21 like I would do for a lawyer who came into Court like that, or any other
22 litigant, protecting privacy on the specific medical conditions. But other
23 than that, the issue is what it is. And if the media finds out that Mr.
24 Adelson's taken a position through a doctor, that he can't be deposed or
25 participate, well, that's just -- my view is that's what it is.

1 On this note one thing I can say to may be potentially pacify
2 -- I'm not trying to pacify, but that's one thing that comes to mind, the
3 Defense. Another thing that Plaintiff's might not agree with, but I think
4 there's a distinction between this issue, can he be deposed, can he
5 participate. And another issue that's floating through here, and that's
6 him running the company.

7 You know, I think there's a big distinction between the two
8 things. I think it's probable that someone might not be able to
9 participate in a deposition or have a physical malady, and still be able to
10 run a company. I mean running a company probably involves others
11 that are there to assist you. It might be something you're a little more
12 comfortable with. It might be something that's not so time-regulated. A
13 deposition is an hour or two. It's not so adversarial. And plus, as a
14 District Court Judge, I don't know what the rules are. And I don't want to
15 turn this into that. I don't know what the rules are that talk about what
16 you have to be able to do to run a company like the -- well, the Sands or
17 LLC.

18 You know, so that's -- that's, you know, that's been thrown
19 up in here. I think it's a relevant, in some ways argument. But it doesn't
20 win today, as far as I'm concerned. I mean if he can run the company,
21 but maybe has a physical condition that limits him from the deposition, I
22 don't -- I don't see how it's -- I don't see how it should be under law or
23 reason, that if you can't be deposed, that that means now you're
24 disqualified. You have to step down. What's that got to -- I mean that's
25 a different issue for gaming people and corporate people and stuff, that

1 I'm not part of is the way I look at that. So there's that, too.

2 And I guess the last thing I'd say is if anyone couldn't
3 participate due to a physical condition, then they can't participate. I
4 don't think a Judge should try to order someone to -- and that again
5 would be for lawyers, witnesses. I mean if one of you came in here and
6 said, you know, I just can't participate in the trial because of a physical
7 condition. Let's just use the example exactly what we see in here. I
8 would have no choice but to say you're excused somehow, or deal with
9 the fallout from that. Just like I would with Mr. Adelson, I'd feel bad for
10 you. You know, as an individual. So I'll stop right now.

11 And let me -- as far as the philosophy of how we proceed in
12 the hearing, because we're going to be talking about these issues that
13 are in the doctor's note, again, my view would be seal the doctor's note,
14 seal any parts of the pleadings that talk about the specifics of the medical
15 condition, which, of course, would be a reflection upon the medical note,
16 or the doctor's note. And likewise, in the Court activity, you can argue,
17 but if you want to mention the specific items that are in the doctor's
18 note, you know, the specific medical conditions, we have to talk about
19 how to do that, because I think that will be sealed somehow.

20 But other than that, I think it's fair game.

21 MR. BICE: Yeah, Your Honor, we don't -- we don't need to --
22 we don't have any intention of getting into the specifics of the contents
23 of the note. We didn't in the opposition and we don't intend to do that
24 today.

25 THE COURT: Okay, would you agree to the extent -- I mean

1 pleadings are out there in the world that have the reference to the
2 medical condition itself, or conditions?

3 MR. BICE: Yeah.

4 THE COURT: Seal that, or do something to redact it or --

5 MR. BICE: Yeah, the letter -- the letter itself, I certainly don't
6 have any objection to -- or -- or portions of any pleadings that recite the
7 contents of the letter, or summarize the specifics of any particular
8 diagnosis.

9 THE COURT: Okay.

10 MR. BICE: We certainly don't have any objection to that.

11 THE COURT: Okay, is there something that needs to be done
12 on that, then, because --

13 MR. BICE: Yeah, I think they're pleading --they need an order
14 from the Court to seal the document. And the rule -- you know, the fact
15 that they're claiming a medical exemption, obviously, our position is -- I
16 think -- it sounds like the Court agrees with this, is that that fact, in and of
17 itself is not confidential.

18 THE COURT: Right.

19 MR. BICE: The specific grounds for that exemption probably
20 are, so their motion -- you know, the order just simply needs to recite, it
21 seems to me, that they are going to redact those portions of their motion
22 for protective order, as well as their reply brief. That just simply is
23 limited to redacting out any -- the letter, obviously, and any summary of
24 the letter's content. And we have no objection to such a -- such a sealing
25 order.

1 THE COURT: Okay. Mr. Jimmerson, Mr. Sauber, you want
2 to say anything about what all I've said now?

3 MR. JIMMERSON: Yes, Your Honor, is this the time for the
4 argument? I do have a short argument.

5 THE COURT: Well, I mean, the motions, I haven't really got
6 to in earnest yet. I just gave this -- given the weekend activity --

7 MR. JIMMERSON: Okay.

8 THE COURT: -- and the pleading issue, and all the emails, I
9 just wanted to at least again try to establish some sort of structural
10 model going forward with the motions.

11 MR. JIMMERSON: We concur with the structural model. We
12 do agree with the court that it is a matter of striking a balance. And we
13 also agree with the sentiment of the Court, which I also believe to be the
14 rule of the Court, that wherever a possible absence confined
15 circumstances, it's a public forum. So, we fully understand the Court's
16 view, and we supported the Court's view.

17 The Court, on February 19th did grant our petition -- our
18 request to submit to this motion for protective order under seal. And
19 specifically directed that the January 23rd note from Dr. Kirkbinder
20 [phonetic] would be also placed under seal. That's confirmed by today's
21 communications. What was concerning to us was the Plaintiff had
22 concurred with this, essentially stipulated to what we're discussing now,
23 as now confirmed by opposing counsel.

24 But the opposition by the Plaintiff to the motion for
25 protective order, at lines 27 and 28 of page 2, had made a reference to

1 the letter submitted by the doctor. And that is what concerned us.

2 And as I expressed this to your law clerk, Ms. Savage, that
3 was the two sentences, or two -- the one sentence, the two lines that we
4 addressed our concern. We concur that opposing counsel did not
5 discuss the specifics of the communication, and we are appreciative of
6 that. And that's also what the Court had ordered from February 19th.
7 But we believe that the Plaintiff had crossed the line relative to pointing
8 out the presence of that letter, which in the same breath, when the
9 Plaintiff's argue about SEC responses, that the Court has addressed
10 today, puts the client in a difficult position, because we wish to be
11 always transparent and faithful to this Court.

12 THE COURT: Okay.

13 MR. JIMMERSON: But in the same breath, we want to
14 protect our company as well.

15 THE COURT: Okay. I'm not sure if there's any further work
16 for me to do, having to do with sealing or asking they not be redacted,
17 and therefore sealed parts of anything the Plaintiffs' filed. And then look
18 at the motion to compel and letters in here. But any references to
19 specifics that the doctor puts in there, I'd ask that you --

20 MR. BICE: We didn't do so.

21 THE COURT: Yeah.

22 MR. BICE: I agree, and we didn't do so. And I just want the
23 record, just because Mr. Jimmerson said there was an order from the
24 Court from February 19, I'm unaware of any such order. And I recall him
25 making the request that this whole thing be sealed, and we objected to

1 that. And that's right in the transc -- that's right in the record where we
2 objected.

3 THE COURT: Okay, well, I can clear that up then and save
4 some time maybe. But I'm granting any request to keep the contents of
5 the doctor's letter --

6 MR. BICE: Yes.

7 THE COURT: -- and the doctor's letter, itself.

8 MR. BICE: Yes.

9 THE COURT: It doesn't stand alone, I don't --

10 MR. JIMMERSON: And that's what you also confirmed on
11 the 19th.

12 THE COURT: And that's all sealed. I grant that request.

13 MR. BICE: All right. And we didn't object -- that aspect we
14 don't. But any request that the existence of a doctor's letter as the
15 predicate for a medical exemption isn't confidential, and it can't be
16 confidential.

17 THE COURT: Okay.

18 MR. BICE: That's our only --

19 THE COURT: Okay, well, I think we have a good starting
20 point now.

21 MR. BICE: All right.

22 THE COURT: So that means we can get into the motions.

23 MR. BICE: Okay.

24 THE COURT: And as always, you know, I read these things,
25 and --

1 MR. BICE: Right. So Your Honor, let me address --

2 THE COURT: Hold on a second. I want to -- I want to --
3 there's a couple of things you don't know, I want to share with you.

4 MR. BICE: Okay.

5 THE COURT: Sorry about that. First thing I'd like to do is
6 take them both at the same time.

7 MR. BICE: Okay.

8 THE COURT: I think it would be a little awkward to say let's
9 do the Plaintiff's motion to compel and then do something on that, and
10 then let's then take up the Defendant's motion for protective order. So to
11 me, it's all in one. Okay.

12 There's some questions I want to bring up to make note of,
13 and that's one of the reasons I want to go first. You'll see I'll get to that
14 in a moment. All right.

15 All right, so there are some things in here that I think warrant
16 some specific analysis on this. One is an idea that floats around in here
17 that Defendant did provide in the chronology several possible January
18 deposition dates for Mr. Adelson. First, on December 4th and then again
19 on December 14th. And that's what's represented here. And you know,
20 I want to make sure that is a fact to be considered. That in fact, the
21 Defense did provide these December -- this December 4th and December
22 14th days. And that seems to suggest to me, so this is a question
23 probably for the Defense, that if that fact is true, that Mr. Adelson was
24 available on December 4th and December 14th, or any other prior
25 specific dates that you may have offered, and that, in other words, this

1 medical condition was not such that it prevented him on those dates. I
2 don't know the answer to that, and I wondered about that.

3 MR. SAUBER: Yes, Your Honor, may it please the Court?

4 We have provided to opposing counsel, they've seen this
5 already. The document that we had provided to Mr. O'Malley, and the
6 Plaintiff's counsel on December 4 and again on December 14th, available
7 dates for all six witnesses -- five witnesses.

8 THE COURT: Okay.

9 MR. JIMMERSON: Not including Mr. Wynn, that would be
10 available. And we had discussed it first on November 30th, And then we
11 were present together on November 30th, and then we delivered these
12 documents. So you will see that Mr. Adelson's availability, as we
13 understood it on December 4th and 14th, was January 16, 17 and 18, and
14 January 24 and 25 of 2019.

15 THE COURT: Okay, so a question for you then would be
16 when you -- on December 4th or 14th, when you gave out these January
17 dates, I mean I'm just asking you for an offer of proof on this, you felt as
18 though he would be available on medical issue to actually be deposed?

19 MR. JIMMERSON: Absolutely. Absolutely. And we were
20 planning on that. I learned of his health condition, so you'll know in the
21 morning of January 15th, when we were here to come into court. And
22 following that court hearing on January 15, I immediately spoke to Mr.
23 Jacobs and to Ms. Yurcich, Mr. Adelson's secretary. And he has not
24 been in the office since Christmas day to the present day. And he also
25 missed, for the first time in years, an earnings report --

1 THE COURT: I saw that in here as an Exhibit. Okay.

2 MR. JIMMERSON: So I'm just going to say that when we
3 spoke to you and to opposing counsel, specifically, opposing counsel in
4 December, we fully anticipated to have the privilege of defending Mr.
5 Adelson's deposition --

6 THE COURT: Okay. All right. The item I was just handed is a
7 one-page list of witness availability, including Mr. Adelson, and why
8 don't I put it in here as a Court exhibit for this motion. Do you have an
9 extra copy of it?

10 MR. JIMMERSON: I do , Your Honor.

11 MR. BICE: I believe it's already -- it's a portion of their
12 opposition, Your Honor. It's an exhibit to their opposition. It's already in
13 the record.

14 THE COURT: Okay. I just want to make sure that we're all
15 looking at the same thing.

16 MR. BICE: Okay.

17 THE COURT: Just because that's the way it is. So this will be
18 Court Exhibit 1 for today's motion.

19 [Court Exhibit 1 received]

20 THE COURT: And, you're, right it's in the pleadings already,
21 but just to make sure it's not some other generation copy of something,
22 it's in here now as a Court exhibit.

23 Okay, so I'm going to be as quick as I can with this. But I
24 want to see if the parties will make a note, please, to tell me it's a bit
25 hypothetical, but if I were to agree to issue a protective order or if I were

1 to deny the claimant's request to depose, what would we do, since it's a
2 seven week trial, and it's really eight weeks , starting today, of time that
3 we're now scheduled to be together, right. What is a couple weeks in,
4 the doctor's note changes, or let me put it another way, he becomes
5 available. You don't need to tell me that now. Just make a note that I
6 want to hear all about that.

7 MR. JIMMERSON: Okay.

8 THE COURT: Because I don't want to have that happen two,
9 three, or four weeks in, and have to deal with it more on the fly. I'd like
10 to start to think about that, in case there's some law, or argument that
11 you guys can now put together for me on that. And we can treat today
12 as a beginning of a colloquy on it. But I'm just -- hang on, this is just
13 something that I thought I'd make a note on to start a discussion about.

14 One other thing that maybe nobody has thought of, and I'm
15 not acting like I'm smarter than anyone, in fact, I don't know how many
16 people are in this room right now, maybe somebody can count, but
17 however many there are, let's just say there's 15, there's about 14
18 smarter people in here than me. Okay.

19 But here's the thing, be careful what you give me, I might
20 just read it. There's a case that's mentioned in here where another
21 judge in a galaxy a long time ago, I think a guy named Gunderson, but
22 anyway, there was -- there's this idea of what was called deposition upon
23 written interrogatories, floating around in a case that was given to me
24 here.

25 MR. BICE: I knew you were going to ask me that question.

1 THE COURT: And I just want to say make a note please,
2 because I would go into this hearing say that's what I would do, now,
3 again, I'm just sharing my preliminary thoughts. But I would say yes to
4 that. I would say yes, if the Plaintiff's say, you know what, we're going to
5 pose written interrogatories to Mr. Adelson based upon the doctor's
6 note. I don't know if that is an order, but the tenor of the note seems to
7 indicate that there are times when, you know, maybe he's a little better
8 than other times. And that's -- I like hearing that. I'm glad he's not, you
9 know, sort of in a permanent disabilities mode. Nobody would want
10 that, I would hope. But it just seems like given, you know, a deposition is
11 a two hour thing, or whatever it is. But it's limited in time. You know, it's
12 very adversarial. If you do written -- these -- what do they call them
13 again?

14 MR. BICE: Deposition by written question, Your Honor.

15 THE COURT: Deposition upon written interrogatories is what
16 the Greens Conn [phonetic] case talks about. I would -- I would -- I'd be
17 inclined to say fine, do that. Because there's still time to do that. But I
18 don't know if anybody wants to do that. Just a thought. And I guess the
19 elephant in the room is that it looks to me like there's enough evidence
20 to say he's not available to participate in a deposition currently. So my
21 thought would be, I can't -- I'm not going to order him to now do
22 anything that is doctor said would be counter to his -- I think whatever
23 burden they have, they meet on that, I'll share with you.

24 So I would be -- I would deny your request and enter a
25 protective order. But again, I don't know what the scope of this

1 protective order would be. Would it be -- obviously be today, but the
2 trial starts a week from today. And there's this allowance, I would
3 probably allow for some alternative of discovery under the circumstance.

4 MR. BICE: Well, we -- I would like to address that --

5 THE COURT: Okay, okay, like I said please make note of
6 these things.

7 MR. BICE: Yep.

8 THE COURT: Because I have one more thing to bring up, and
9 then I'm done.

10 MR. BICE: Okay.

11 THE COURT: Next one is on the Defense pleadings. Oh, here
12 it is. This is important to me on this one, so and I'm done after this. The
13 Defense pleadings indicate -- let me paraphrase it. I think what the
14 Defense is saying is, look, here's the thing. The Plaintiffs only wanted to
15 re-depose Mr. Adelson because of the expanded scope of discovery into
16 Korea, Singapore and Japan. And they evidence that, I think, in their
17 paperwork by a November 30, 2018 email, which states in relevant part,
18 it's -- you know, and email from the Plaintiff saying, hey, you expanded
19 scope of Mr. Adelson's testimony -- or it's been expanded. Plaintiff
20 intends to take deposition immediately on these new matters having to
21 do with this expanded scope, Korea, Singapore, Japan. And so as I take
22 it, that's the Defense's position, I'd like to know that. In other words, it
23 seems like what the Defense is saying is look, we wouldn't have -- we
24 wouldn't have needed -- we wouldn't have done a redeposition if it
25 wasn't for the expanded scope.

1 And so I need to know that. If we wouldn't have had the
2 expanded scope, was there any reason to re-depose anyway? And then
3 on top of that, it seems like the Defense is saying to me, we're going to
4 withdraw any and all affirmative use in a damages only trial. Defense on
5 damages, I guess, having to do with Korea, Singapore and Japan, as to
6 what Mr. Adelson would have -- would say about any of that. And so I
7 want to make sure I understand that. That that's -- and what's the scope
8 of this withdrawal if you will, in that regard? I mean I want to make sure
9 because I don't want to have it confused in some way. Because I think
10 the Plaintiffs have evidence from other sources, as to Singapore, Japan
11 and what's the other one? Korea.

12 MR. BICE: Korea.

13 THE COURT: So is it -- is it that the Defense's position is
14 we're simply withdrawing anything Mr. Adelson would have said? We're
15 not going to -- we're not going to have any witness say what he would
16 have said. And certainly he's not going to participate and say anything
17 about that, because he's not here. And how do I deal with that, if the
18 evidence nonetheless comes up? It's an issue.

19 That's it. I'm done

20 MR. BICE: Okay.

21 THE COURT: So Plaintiffs you started this, I think you get to
22 go first.

23 MR. BICE: Thank you, Your Honor.

24 MR. JIMMERSON: I was just thought we were going to do
25 our motion first.

1 MR. BICE: We would like to address this --

2 THE COURT: Well, Plaintiffs have a motion to compel, and
3 then you did your protective order, right?

4 MR. JIMMERSON: Ours was filed first, though, Judge.

5 THE COURT: Oh, it was, okay. Well, I screwed that up. I'm
6 going to let them go first.

7 MR. BICE: Okay.

8 THE COURT: Sorry about that. I made a mistake there on
9 the time.

10 MR. BICE: I'm not sure how it was filed first? I think they
11 were filed at the same time.

12 THE COURT: I don't know how it was filed first, actually.
13 Which one was filed first? That's who gets to go first.

14 THE COURT RECORDER: This was filed first.

15 MR. BICE: Is there anything --

16 MR. JIMMERSON: They filed it over the counter --

17 MR. BICE: I have no --

18 THE COURT: Okay, go ahead, Mr. Jimmerson --

19 MR. BICE: I don't know how they were -- anyway. I don't
20 know how his was filed first. Since he's representing it was, I'd like to
21 know the basis of how it was filed first.

22 THE COURT: Well, I guess since that's important now.
23 Remember Bill Terry.

24 MR. JIMMERSON: Yep.

25 THE COURT: Okay. But let's look at it. I can get my law clerk

1 in here and pull it up. I don't know.

2 MR. BICE: I don't know either.

3 THE COURT: Because I don't have the Odyssey and I don't
4 really do that too often, either.

5 MR. JIMMERSON: I know that. But the answer is that we
6 were submitting it to your clerk by noon or 1:00 on Friday and you didn't
7 file yours until later on Friday. I just know that we were filed four or five
8 hours ahead of you, so --

9 MR. BICE: I have no idea.

10 THE COURT: Okay, well -- in this case --

11 MR. BICE: Let's just -- let's just proceed, Your Honor. I think
12 we're spending more time --

13 THE COURT: One of the other tenants of the law.
14 Possession is nine-tenths. He's possessing the -- he's possessing the
15 podium. Go ahead.

16 MR. BICE: Let's proceed, Judge.

17 THE COURT: Okay. Thank you, Your Honor.

18 MR. JIMMERSON: All right. First, the Court's understanding
19 procedurally is exactly accurate and it is material to assisting the Court
20 and making a final resolution in the competing compliance of
21 Defendant's motion protective order and Defendant's motion to compel.

22 The first -- I understand that the Supreme Court's reversal
23 was July of 2016. You held hearings in December of 2016, February of
24 2017. So two years have been present to take the deposition of Sheldon
25 Adelson, if it was really sought, as well the Plaintiff -- the Defendant

1 seeking that position of Richard Suen or Round Square, which had never
2 been taken before. It wasn't until the 30th of November that we learned
3 from the Plaintiff that, as a result of supplemental disclosures by
4 ourselves on November 26th, that the Plaintiff desired to take a short
5 deposition of Mr. Adelson.

6 The subject matter as the Court has properly noted,
7 specifically was, on December -- on November 26th, we said that Mr.
8 Adelson would speak to the expanded area of, quote, Las Vegas Sands
9 Corporation proposal to operate an integrated resort in Singapore and
10 the use of third party government relations consultants in Asia, end of
11 quote. And that was filed with -- on November 26th, 2018.

12 And on November 30th, 2018, Mr. O'Malley communicated,
13 as we were together, exchanging the dates, like you have in front of you,
14 that he would like to take a short deposition of Mr. Adelson on those
15 expanded areas. We offered the dates, as you've seen, and so as far as
16 we knew, through the middle of December, we believed we were on
17 track to take the five depositions and then the six, including Mr. Adelson,
18 and we have completed the five and not Mr. Adelson's.

19 As I represented to the Court, it wasn't until January 15 that I
20 learned of the dyer nature of Mr. Adelson's condition, health, and that he
21 had, in fact, not participated in the company proceedings in terms of
22 being physically present in Las Vegas at the company on Las Vegas
23 Boulevard, since approximately Christmas Day, give or take some days,
24 the third week of December, through January 15 and now, I can confirm,
25 through the present date.

1 So Las Vegas Sands, as we approach, we were off the record
2 in a conversation with you on November 15th, Mr. Sauber led that
3 conversation. We advised the Court it's only fair that Las Vegas Sands,
4 we withdraw those topics of Las Vegas Sands Corporation proposal
5 operating an integrated resort in Singapore and the use of third party
6 government relation consultants in Asia from Mr. Adelson's testimony.

7 I also think the question you asked right now, Judge, is a
8 proper one. And that is that it wouldn't be fair to have an end run, have
9 some other witnesses testify about what Sheldon Adelson would say, if
10 Mr. Adelson himself is unable to do so. They certainly can speak for
11 themselves. We have -- the witnesses that you have -- have been seen
12 and have been deposed by the Plaintiffs, can speak directly as to the use
13 of third party consultants in Singapore and throughout Asia and they
14 have done so and those contracts, indeed, have been provided by
15 Defense to the Plaintiff.

16 But the nature of the need, if you will, for the deposition of
17 Mr. Adelson eviscerates when you withdraw the additional -- additional
18 limited grounds that we had noticed on November 26th. And there's
19 none been suggested by the Plaintiff in their papers as to why there's
20 still a continuing need to take Mr. Adelson's deposition in light of that
21 withdrawal. There's not been another issue or topic that's been brought
22 to you by the Plaintiff in their papers, that I've seen, that would say, well,
23 Judge, we still -- there's another subject matter we need him on. It's a
24 burning issue that we haven't had a chance to take his deposition.

25 Secondly --

1 THE COURT: Let me interrupt you on that point because I
2 want to share with you a bit of disagreement I have on this.

3 MR. JIMMERSON: All right.

4 THE COURT: You certainly can, if you want to, withdraw the
5 evidence that you would otherwise potentially have as to what Mr.
6 Adelson would say that the company did in Korea, Singapore, and/or
7 Japan. But my thought is this: If -- if the Plaintiffs have evidence as to
8 what they think the Sands did in Korea, Singapore, and Japan, that
9 would allow them to depose, I think, Mr. Adelson on those points, even
10 in light of such a withdrawal. And I wanted to make sure that I said that
11 to you.

12 MR. JIMMERSON: Okay. I would say to the Court that
13 they've never made that argument. I think theoretically that's a very
14 plausible point. I wouldn't disagree with that. I would just say that the
15 Plaintiffs have never noticed a deposition of Sheldon Adelson until
16 February this month, 2019. They never noticed it in the two years
17 between December of '16 and the cutoff of discovery on December 14th
18 of 2018.

19 THE COURT: Okay.

20 MR. JIMMERSON: Never noticed his deposition.

21 THE COURT: Okay. I'll tell you something else too on this, in
22 this nice back and forth we have, this is something that you'll be happy
23 with. I think everybody could -- should have figured this out or did figure
24 this out, but going way back to the fact that I had everybody come in for
25 a detailed status check type court hearings after the remand order, I want

1 to share with you that I know it to be true.

2 So, therefore, it is true because I know it to be true, that I, as
3 a court and as a judge, was very aggressive in trying to figure out what,
4 if any, role now Mr. Adelson was going to have in the reconstituted
5 hearing. And I felt as though I should do that because of the Court
6 having an interest in managing its calendar and the fact that, last time,
7 there was somewhat of a extreme effort that the Court, as an entity, had
8 to put forth by way of security, which is fine.

9 You know, the reality of someone like Mr. Adelson coming
10 into the courtroom, you know, there's a -- there's a big effort put in by
11 the court system in general. It's marshals, the media attention, and
12 security, and me trying to manage the courtroom with all that going on.
13 So that motivated me to want to try to figure out what's happening with
14 Mr. Adelson this time around, not because he deserves special
15 treatment, but rather because of the reality of what happens when
16 someone like that comes into a courtroom here. It's a real imposition
17 upon -- it's a practical imposition upon the court system itself, the
18 marshal core on down and the Court itself.

19 And so, only for that reason, we've had to continue to bring
20 this up. I am guilty probably of something else that relates to this and
21 that is, you know, just like I told my Bill Terry story this morning, it turns
22 out, probably when I retire, one of the highlights, one of the things I'll
23 always remember, is the three days that Mr. Adelson sat, I don't know
24 what it is, five feet away from me here. And it turned out, I had -- I had a
25 tremendous respect for him that came about because of the way that he

1 dealt with me, okay?

2 I know he came in with his bag of tricks and pulled a bunch
3 of stuff out and we were all shocked by that and nobody knew, for the
4 first five seconds what to even do with it, I get that. Yeah, I was
5 relatively new then. If somebody walks up with a bag of tricks now, I'll
6 stop them and say what's in the bag? But anyway, I don't mind saying, I
7 respect the man. I mean, his life story -- I actually told Carrie to burn that
8 and, you know, I've watched it since because it's an interesting little life
9 story. It's a part of the fabric where we live.

10 MR. JIMMERSON: It is.

11 THE COURT: You know, so I've enjoyed all that and I have
12 respect for him. But the point of it all is, you know, I want to say to the
13 Defense, part and parcel of all my aggressive dealings, having the status
14 check after the remand order and, from time to time, me just sua sponte
15 saying, well, what about Mr. Adelson? What's going on with Mr.
16 Adelson? You know, it was all designed to avoid this problem that we're
17 having right now. It was all designed to deal with Mr. Adelson early as
18 opposed to late.

19 MR. JIMMERSON: Correct.

20 THE COURT: Because I just felt like that was the best thing to
21 figure out. That's a moving part that I wanted to effectively deal with.

22 Go ahead.

23 MR. JIMMERSON: Thank you. I will tell you also, Mr.
24 Sauber, Mr. Jacobs, and myself have met with Mr. Adelson both in
25 February of 2018 prior to the March 24th or 26th expected trial. That was

1 delayed because of the Plaintiffs' request to continue the trial over the
2 Defendants' objection and thereafter. I began the process of preparing a
3 direct -- something I haven't been able to do, since he's been unavailable
4 from the third of week December to the present date. Cutting to the
5 chase, because I think I know the gravamen or the core emphasis this
6 Court has on fairness and on their propriety, is simply this, I would like
7 very much and believe our -- the Defendants' case harmed by the
8 inability to call Mr. Adelson to the stand.

9 So I will just say to you, and I have the consent of Mr. Jacobs
10 and, of course, my co-counsel, very abled co-counsel, that if Mr.
11 Adelson's health improves to the point where he can get a doctor's
12 clearance to give testimony, we will not only notify you, we will make
13 him available for deposition, a live deposition, to the Plaintiff, whether it
14 be on a weekend or a Tuesday evening, or Monday morning, whatever it
15 may be. But my point is, at a time convenient to the parties; although, I
16 mean, nothing will be convenient totally, but -- and give them ample
17 opportunity to do so.

18 It is my desire to call Mr. Adelson to the witness stand. It is
19 my desire to have him speak and look Mr. Suen in the eye as well as the
20 ladies and gentlemen of the jury, but that has been deprived of me,
21 that's been made not available to me now. But in answer to Your
22 Honor's question with regard to, there'll be no ambush here. He's not
23 going to suddenly show up and not take the witness stand without the
24 Plaintiffs having had their deposition.

25 Relative to written depositions under Rule 31, of which I've

1 had some experience, it was something we were trying to work with
2 Edmond Ho on because it would be a way to overcome the objection by
3 the Plaintiffs and the hearsay that you have sustained, and I'm going to
4 hold you to that when it's a comparable information for the Plaintiffs
5 being offered. But that was -- my point is, and that procedure would be
6 a way and that's frequently how it's used, is people overseas, they use a
7 apostille as the notary, if you will, the proof of testimony.

8 The difficulty is that not only do we all have enough to do
9 between now and commence of trial and thereafter, but I don't know the
10 value of that information. And so, I would resist that only because of the
11 additional labors involved. It could be done. Certainly, it can be done,
12 but there is typically an argument --

13 THE COURT: Okay.

14 MR. JIMMERSON: -- done, how many questions is that? Is
15 that 30 questions? Is that 50 questions? And so, I would simply resist
16 that because I think that I don't know what I'm dealing with, with regard
17 to my ability to sit with Mr. Adelson, or Mr. Sauber or Mr. Jacobs, to go
18 and sit with him and say, you know, Sheldon, we're going to spend an
19 hour and a half here and we're going to answer seven or ten of these
20 questions and then, you know, three days later, we'll do the same thing.
21 I don't know the utility or benefit that would be gained to Plaintiff,
22 despite their orneriness on the issue. It is imbalanced, to use the term
23 that I think is appropriate, the inconvenience, and prejudice, and harm to
24 the condition of Mr. Adelson physically.

25 So the point, it probably could be done, Judge, but I would

1 argue that the Plaintiffs, in some regards, didn't push the envelope at all
2 and didn't seek a deposition until November 30th orally. And from my
3 perspective, I don't fault Mr. O'Malley. That would be the same as a
4 written deposition. If I spoke to him, it would be the same thing as a
5 writing, so I'm not -- you know, not, you know, to criticize him for lack of
6 a notice, but it didn't happen until November 30th with the cutoff of
7 discovery on December 14th. In any event, we still intended on being
8 there.

9 But if he is available to testify, we'll provide a deposition and
10 before he would ever take the witness stand here.

11 We are going to have an updated communication letter of
12 some sort from a doctor, I believe, later this week. In an off-the-record
13 discussion, we'd be pleased to share with you with opposing counsel. I
14 don't know what that's going to say and that's one thing I don't feel
15 comfortable speaking to because I'm not qualified as a physician to do
16 so and not having had a chance to observe Mr. Adelson since the second
17 of -- or third week of December when he has fallen ill.

18 THE COURT: Do you think you'd be able to get an updated
19 doctor letter by --

20 MR. JIMMERSON: We've requested it.

21 THE COURT: -- by Friday

22 MR. JIMMERSON: Mr. Jacobs has worked earnestly to
23 obtain that, yes.

24 THE COURT: By Friday this week?

25 MR. JIMMERSON: That's right.

1 THE COURT: Okay. How about Thursday of this week?

2 MR. JIMMERSON: Yes, sir.

3 THE COURT: Okay. How about this, could we get that letter,
4 since you offered it, by close of business Thursday, 5:00?

5 MR. JIMMERSON: I'll just ask Mr. Jacobs.

6 MR. JACOBS: I don't see any reason why we can't. I'll reach
7 out to Dr. Adelson [sic] right now.

8 MR. JIMMERSON: Yes, Your Honor, close --

9 THE COURT: Okay.

10 MR. JIMMERSON: -- of business on Thursday.

11 THE COURT: That would be great because -- let's see what
12 the doctor has to say. And I suggest this, unless the Plaintiffs stand up
13 right now and tell me don't do it, because it's the Plaintiff's decision, I
14 think, you wanted to do the -- at a minimum, the deposition upon written
15 interrogatories idea, but it'd be interesting to see -- I'd be interested to
16 see what the doctor says about that, since that's something that's come
17 up that the doctor may be able to weigh in on, given the parameter of
18 what that would entail.

19 MR. BICE: Well, Your Honor, I'll be happy to address that
20 because I think we're getting a little bit far afield here. I mean, I don't
21 accept the premise that letters from doctors are evidence. I mean, we
22 previously had a declaration from a very highly decorated member of
23 the -- former member of the U.S. Secret Service offering an explanation
24 for why an exception should be made for Mr. Adelson. The Court didn't
25 just say, well, I'm just going to accept that naked assertion. I'm going to

1 make that witness get on the witness stand, and justify, and give Mr.
2 Suen the right to cross-examine this story.

3 THE COURT: I thought about that.

4 MR. BICE: And that --

5 THE COURT: I thought about that, Mr. Bice, but --

6 MR. BICE: -- so this --

7 THE COURT: -- I think there's a distinction between a
8 security concern and that whole body of law about what courts should
9 do and the public nature of the court, as you saw it play out last time,
10 with Don Campbell and Dershowitz and everybody.

11 MR. BICE: Uh-huh.

12 THE COURT: -- and Mr. Pisanelli and others. But -- but the
13 point of it is, you know, there's going to be an updated letter by
14 Thursday at 5. So what format -- do you want it to be notarized, is that
15 what you're saying? I mean, what's the -- what's your real concern?
16 Because I don't have any concern of this doctor saying what he says he's
17 saying here.

18 MR. BICE: Yeah, I don't have a concern about the doctor
19 saying what he's saying.

20 THE COURT: Yeah.

21 MR. BICE: I -- what my concern, Your Honor, is, is that the
22 doctor is saying what he's saying, but of course, that's what -- that's the
23 one thing they want him to say because Mr. Adelson -- and, listen, we're
24 not writing from a clean slate here. Mr. Adelson has attempted to avoid
25 providing testimony previously, including in this case. So we're not

1 writing on a clean slate. So the doctor -- you know, one of the things I
2 said during one of the sidebars up here is, I want to see is travel, right?
3 So the doctor says, you know -- the doctor doesn't give him, and Mr.
4 Jimmerson used a nice word, I thought, clearance. The doctor didn't say
5 he couldn't be deposed. There is no such thing as a clearance.

6 If he is doing -- this is why we asked for -- what his daily
7 schedule? Who's he meeting with? Where's he traveling to? If he's
8 doing those things -- that's why we -- I understand, Your Honor, you're
9 saying, well, running the business and being deposed are two different
10 things in some regards. I agree with that, as generally speaking. But as
11 to specifics, if you can make the decisions that can impact thousands of
12 people's lives, which at his -- at his level, of course, those -- his decisions
13 do that, both for shareholders and for employees. If he's capable of
14 making those types of decisions, the Court can set reasonable
15 accommodations considering the taking of his deposition.

16 And, in fact, one of the suggestions I'm going to make to the
17 Court is a very simple one. I think you should be at his deposition. I
18 think -- because we're going to have an argument about whether he's
19 truly capable of appearing live at trial, the easiest way to solve this, the
20 easiest way to solve this is to set up a video deposition where the Court,
21 His Honor, is present. You're going to be able to see right then and there
22 whether he is capable of providing testimony. We can conduct it in very
23 reasonable increments and then the Court is going to be in a position to
24 evaluate, should he really be excused from testifying at trial? Because,
25 otherwise, we're not in a position to evaluate because we're just here

1 saying, well, Mr. Adelson has got a note from a doctor. That's true. Lots
2 of people could get notes from doctors, particularly saying that they
3 don't want to do something. I get that. But Mr. Adelson, again, not
4 exactly writing on a clean slate here --

5 THE COURT: Well, isn't --

6 MR. BICE: -- about providing testimony. So I think it's not
7 unfair for us -- it's not unfair for Mr. Suen and Round Square to say,
8 listen, something more is necessary than just a letter from a doctor.

9 THE COURT: He's a 17-year treating physician doctor?

10 MR. BICE: Yeah. Your Honor, just because we -- we thought
11 this was just interesting because, speaking of doctors' notes -- and I raise
12 this, it's kind of a joke. Mr. Jimmerson might not think it's funny, but
13 here's another doctor note obtained from a famous person recently from
14 a doctor. And I just -- this is a matter of public record, so I'll show it to
15 the Court. And my point with this, would be this, Your Honor, important
16 people can get doctor's notes. They can even get doctor's notes to
17 declare that they would unequivocally be the healthiest person ever to
18 serve as president of the United States, you can get a doctor to say that.

19 My point here is, in this particular case, Mr. Adelson is a
20 central witness, I think we all know that. And just simply saying he's got
21 a doctor's note, but all the other questions that we have raised have
22 gone unanswered, that is not fair to my client. That's not fair to my
23 client. If the Court wants to evaluate whether or not Mr. Adelson should
24 be allowed to claim a medical exemption based on nothing more than a
25 note from a doctor, we ask the Court to convene a video deposition of

1 him where the Court is actually present and you evaluate him. You
2 evaluate him, whether or not he can really testify or not.

3 THE COURT: How could I do that if I have evidence to
4 suggest that even that would be detrimental to his health?

5 MR. BICE: Well, because --

6 THE COURT: Even the --

7 MR. BICE: -- I would submit that you don't have actually
8 evidence that says that.

9 THE COURT: I mean, that's not something I think I would
10 ever do, if I have a belief that it would be detrimental to someone's
11 health.

12 MR. BICE: Sure.

13 THE COURT: In other words, we gem all that up and let's say
14 he's in the state that's reflected in this doctor's note and it becomes
15 readily apparent that this was a big mistake to even put him through this,
16 I don't want to be part of something like that.

17 MR. BICE: Your Honor, and if that's actually what the
18 doctor's note said and there was actual evidence of that, that would be
19 one thing.

20 THE COURT: Okay.

21 MR. BICE: But that's not what that note says. And, in fact,
22 Your Honor, the note --

23 THE COURT: Okay.

24 MR. BICE: -- doesn't even say when he saw him. But here's
25 more to the point, this is why we attached the earnings call transcript,

1 right in the transcript, Mr. Goldstein, his number two, the guy who I
2 assume is probably talking to him daily, maybe he's not, but I -- my
3 suspicion is that he would be ordinarily, says he met with him just the
4 day before the earnings call and he was just feeling a little under the
5 weather, right? That's not someone -- what's described in that earnings
6 call -- which, by the way, legally you can't omit facts. If that doctor's
7 letter, Your Honor -- we just accept that doctor's letter --

8 THE COURT: Well -- okay.

9 MR. BICE: -- that is completely inconsistent --

10 THE COURT: All right. Let me --

11 MR. BICE: -- the description in the earnings call.

12 THE COURT: -- let me interject myself here, Mr. Bice.

13 MR. BICE: Yes.

14 THE COURT: What form of letter do you think would be --
15 because we're going to get an updated one by Thursday at 5. Are you
16 talking about a notarized correspondence? What are you -- what's your
17 view as to what would be acceptable?

18 MR. BICE: Well, I think it had -- would have to be in the form
19 of a declaration, Your Honor.

20 THE COURT: Okay.

21 MR. BICE: Something where the doctor is attesting under the
22 penalties of --

23 THE COURT: Okay. I think that's fair. Under these
24 circumstances, that seems to be fair. So if you could put that in on
25 Thursday letter, that would be great.

1 MR. BICE: But I don't know what -- again, Your Honor, I don't
2 know what --

3 THE COURT: Do you --

4 MR. BICE: -- the --

5 THE COURT: Hold on second.

6 MR. BICE: Oh, sorry, Your Honor.

7 THE COURT: Who's this guy?

8 MR. JIMMERSON: I apologize, general counsel, Mr. Jacobs.

9 THE COURT: No, the guy in the back you're talking to.

10 MR. JIMMERSON: Sorry, that's who I was speaking to. I just
11 wanted to make sure I don't over --

12 THE COURT: No, you were talking to the gentleman over
13 here about the letter.

14 MR. JACOBS: Yes, this is --

15 MR. JIMMERSON: Lon Jacobs, general counsel of Las Vegas
16 Sands Corporation.

17 THE COURT: Okay. Mr. Jacobs, would you --

18 MR. JIMMERSON: -- and Las Vegas Sands, LLC.

19 THE COURT: -- would you -- in the letter that's due Thursday
20 by 5, would you also make sure it's a sworn declaration under the
21 penalty and perjury by -- from the doctor?

22 MR. JACOBS: Yep.

23 THE COURT: Okay.

24 MR. JACOBS: Yes, sir.

25 THE COURT: Good. That settles that. Now, here's what's

1 come to mind based upon this continued discourse. It seems to me that
2 before I would consider further the request that the Plaintiffs have made
3 for me to be present at some deposition, what about the doctor
4 appearing in a evidentiary hearing style sense and telling us, you know,
5 we could -- I'd be willing to seal that or keep that one confidential under
6 these circumstances, but --

7 MR. BICE: Yes.

8 THE COURT: -- the calling of the doctor, you know, himself
9 for 15, 20 minutes, whatever it might take --

10 MR. BICE: That's what we would want, Your Honor.

11 THE COURT: -- to talk about what the -- what he can do. For
12 that matter, can he even do this deposition upon written interrogatory?
13 Can he -- can we try to do a deposition somehow, someway? I mean, is
14 there a -- if he's -- if the medical opinion is that he, on some days, is fine,
15 other days, not fine, what about even a daily, hey, he's -- today is a good
16 day, let's just do the deposition and everybody does it, you know, quickly
17 then, you know --

18 MR. BICE: That --

19 THE COURT: -- on a moment's notice sort of thing because
20 he's maybe in a better state that day.

21 MR. BICE: That would be our request.

22 THE COURT: I mean, something from the doctor. I'd like to
23 hear, you know, what does the doctor think he's capable of. And, you
24 know, that's basically a bit of an unknown here based upon the literal
25 language of the letter that we have.

1 MR. JIMMERSON: Although, Judge --

2 THE COURT: I mean --

3 MR. JIMMERSON: -- without disclosing the contents --

4 MR. BICE: We --

5 MR. JIMMERSON: -- the -- my argument has been, you
6 know, of course, hijacked by opposing counsel, I think, pretty
7 effectively. But the third paragraph of the doctor's letter speaks directly
8 to Your Honor's question --

9 THE COURT: Yeah.

10 MR. JIMMERSON: -- specifically, in regard to "cannot
11 effectively concentrate or respond". The question you are asking has
12 been affirmatively answered by this doctor on January 23.

13 THE COURT: Yeah. I will share with you, I take the full
14 upshot of Dr. Buchbinder's letter to be that, frankly, from a medical point
15 of view, as far as anything having to do with his deposition scenario,
16 leave him alone.

17 MR. JIMMERSON: Correct.

18 THE COURT: That's what I take form this.

19 MR. JIMMERSON: So do we.

20 THE COURT: And, you know, not --

21 MR. JIMMERSON: So would any reasonable person.

22 THE COURT: -- not tell him to get ready, show up, and the
23 Judge is going to show up, and we'll see what happens type of thing.

24 MR. JIMMERSON: Right.

25 THE COURT: Okay.

1 MR. JIMMERSON: Keep in mind that --

2 THE COURT: I mean, that's what I see here, but again, Mr.
3 Jacobs is going to cause a more -- as detailed as possible letter to come
4 in by Thursday at 5 on all these points.

5 MR. JIMMERSON: We will. And we will.

6 THE COURT: I'm sure he's keeping good track of everything
7 over there.

8 MR. JIMMERSON: Let me also point out that the Plaintiffs
9 don't have a very good argument for taking the deposition at all. Not
10 only did they not seek to take it during the course of this last two years
11 and, as the Court has correctly noted, despite the Court's own active
12 prompting of the --

13 THE COURT: Yeah.

14 MR. JIMMERSON: -- parties to do so, commencing in
15 February of 2017, but there is no automatic right to a second deposition,
16 particularly when one has already been given and then two additional
17 intervening multiday depo -- live testimonies at the time without any
18 request for a depo until there was this one additional area on November
19 30th, 2018 that I've identified as now withdrawn.

20 So there's just not a right to compel such an event, if he was
21 perfectly healthy, as an issue. So that -- that, I think, is something the
22 Court needs to recognize. The case law cited by the Plaintiffs it totally in
23 apposite. The *Gunderson* case, the judge -- with Hank Greenspun, had to
24 do with Mr. Hughes not wanting to give a deposition because of his
25 reclusive lifestyle, not because he had a physical condition. And that's

1 what -- that's also the Plaintiff's cases are all first time depo cases. They
2 are not predicate cases that compel second and third depositions,
3 especially if a medical condition is present. So the case authority by the
4 Plaintiffs is also in apposite.

5 And then I -- I have to remind the Court that there is an
6 aspect of this Plaintiff's argument that borders on harassment because
7 Mr. Bice, on February 19th said these words, "And we have been waiting
8 for months to Mr. Jimmerson to give us an answer and we waited until
9 last month to tell us for the first time that his client was going to show."
10 Really, Todd? I delivered a letter to you on December 14th and
11 December 4th that gave you dates. You never noticed a deposition until
12 February of 2019. You haven't been waiting months, you haven't been
13 waiting but days after you had been given the opportunity and didn't
14 follow up.

15 And so, I understand that there's something maybe in some
16 other case or other issue that makes it personal to opposing counsel, but
17 it's not a fair representation of this record. It's not a fair representation
18 of the balance and fairness of this Court as provided to both sides and
19 it's a not a fair recondition of the present physical condition of my client.
20 The motion should be granted, Judge.

21 THE COURT: All right. I'm going to put into -- unless there's
22 an objection, I guess, then I'll deal with that, Court Exhibit 2 will be this
23 letter from the -- Mr. Trump's doctor, I guess.

24 MR. BICE: What's that, Your Honor?

25 THE COURT: Well, you gave this letter to me. It's -- I want to

1 put it in here as a court exhibit.

2 MR. JIMMERSON: Yes, I don't object, Your Honor. That
3 letter says that the president of the United States is healthy.

4 MR. BICE: Yes.

5 MR. JIMMERSON: So that's really -- and that's as close as an
6 argument as the Plaintiffs can make under this case.

7 THE COURT: Any objection to putting --

8 MR. JIMMERSON: That's everything you need to know.

9 MR. BICE: No, I'm just --

10 THE COURT: Since I was -- Mr. Jimmerson, since I was
11 handed this, any objection --

12 MR. JIMMERSON: I have no objection to that, Your Honor.

13 THE COURT: This is a Court exhibit, Carrie.

14 MR. BICE: Thank you, Your Honor.

15 [Court Exhibit 2 received]

16 THE COURT: Okay. All right. Mr. Bice.

17 MR. BICE: Yes, Your Honor. I'm going to try and go through
18 and make sure it covers your questions, but I do want to start back where
19 we're at here, at the beginning.

20 As I said before, we don't write on a clean slate here. This
21 isn't a litigant coming into the courtroom for the first time and saying I
22 don't want to have to provide testimony. The last -- before the last trial,
23 we had to go to extraordinary lengths to make Mr. Adelson appear at the
24 trial because he claimed that because his security guards had slapped
25 our process server's hand down in handing him the subpoena that he

1 hadn't been served and, thus, he didn't have sh -- he didn't have to
2 testify. That's exactly what happened.

3 And then the fallback position because the declaration from
4 Brian Nagle that Mr. Adelson shouldn't be video recorded providing
5 testimony due to terrorism concerns. So we don't write here -- this isn't,
6 again, the first time a witness has -- this witness has come into court and
7 said I should be excused.

8 We're now here with a new position saying, I should be
9 excused. And I think Mr. Jimmerson conden -- he collapses the timeline
10 to make it seem like, oh, you know, we have offered this up and they just
11 didn't take us up on the offer. What actually transpired, and as the Court
12 knows, we were here on January 8th, January 8th of this year and it's
13 right in the transcript. Mr. Jimmerson, he was here arguing about the
14 fact that Mr. Suen should be re-deposed, even though Mr. Suen wasn't
15 being designated on any new topics, he should be deposed and they
16 have a right to pick him.

17 And you cited an email from Mr. O'Malley about new topics,
18 Your Honor. I'm going to actually ask you to look at item number 2 of
19 that same email, which is Exhibit B to their motion for protective order.
20 Right there, where Mr. O'Malley is the one pointing out that, wait a
21 minute, Mr. Suen, unlike Mr. Adelson, isn't designated on new topics.
22 So why do you think you get to re-depose him? And what was Mr.
23 Jimmerson's response to that? We have a right to re-depose him.

24 So he was here on January 8th arguing to you we have a
25 right to re-depose Mr. Adelson [sic] and telling the Court, as he did, it's

1 right in the transcript, emphasizing how Mr. Adelson has also going to
2 be re-deposed. I believe that's right at page 35 of the transcript, Your
3 Honor, from January 8th.

4 THE COURT: Let me interject something that is important on
5 this --

6 MR. BICE: Yes.

7 THE COURT: -- quickly. Rule 30 talks about a party has to
8 obtain leave of court if you've already been deposed in a case.

9 MR. BICE: Yes.

10 THE COURT: Now, of course, that -- that brings up an issue
11 that I didn't really see law on and that is, in this unique remand scenario,
12 does that count as -- is this a re-deposition or is it the first deposition,
13 again, given the remand?

14 MR. BICE: Right. Well, Your Honor --

15 THE COURT: But even throwing in the expand of discovery,
16 is it the first deposition that he would have a right to or is it not, in this
17 scenario, to where you would have to have a Rule 30 leave of court
18 blessing? But here's what I'm getting to, okay? I don't know if you all
19 are going to disagree, but sometime ago, I can't tell you exactly when,
20 but it's been months, that issue was resolved in my head by -- where I
21 drew a conclusion of the parties, nonetheless, have agreed and
22 stipulated to depose Suen and Adelson as the two main players in this
23 case.

24 MR. BICE: Yeah. Yes.

25 THE COURT: And so, that was it for me. I didn't involve

1 myself any further with the issue of whether there was a need for leave
2 of court or any of that. I mean, again, I , for months, have proceeded
3 with the thought that the parties have agreed/stipulated, therefore,
4 rendering it the -- the order of the case, or the law of the case, that Suen,
5 Richard Suen, and Sheldon Adelson were both going to be deposed
6 again --

7 MR. BICE: Right.

8 THE COURT: -- for purposes of our trial. So --

9 MR. BICE: Well, we --

10 THE COURT: -- that's it, you know?

11 MR. BICE: -- thought so too. So on January 8th, again, and
12 their -- they were emphasizing to the Court, and it's right in the
13 transcript, emphasizing to the Court how Mr. Adelson too would be
14 deposed. And so, that entitled that -- again, justified their deposition,
15 again, of Mr. Suen.

16 Now, I found it interesting in their reply, Your Honor, they
17 tried to say, well, this is a depo of Round Square, so it's different. Well,
18 that's not true, Your Honor. Remember, when we were here, when they
19 were talking about Round Square, they wanted to make sure that it was
20 Mr. Suen who was going to be the representative. That, I think, is -- that
21 argument is just sort of a hail Mary coming out of left field --

22 MR. JIMMERSON: That is not true.

23 MR. BICE: -- there at the last minute.

24 MR. JIMMERSON: We asked you who the corporate
25 representative --

1 MR. BICE: So with respect --

2 MR. JIMMERSON: -- was.

3 MR. BICE: -- with respect -- I don't often agree with a lot of
4 what Mr. Jimmerson says from the podium, so I haven't interrupted him
5 and I'll try not to do so. If I did, I apologize, Mr. Jimmerson.

6 MR. JIMMERSON: You did.

7 MR. BICE: So turning, Your Honor, though, to what the
8 argument here being made is, January 15th, they are here arguing about
9 Mr. Suen's deposition. So one week after January 8th, where they're
10 here emphasizing Mr. Adelson will be re-deposed just like Mr. Suen,
11 they're here arguing to you -- because remember, we had an debate
12 about the date Mr. Suen would read -- would reappear. They argued to
13 you, on December the 15, how Mr. Suen should be re-deposed, right?
14 Made no mention that morning about Mr. Adelson's unavailability, until
15 when? Until after you had ruled and set the time for Mr. Suen. Then all
16 of a sudden, at the close of the hearing, they rise up and they say to His
17 Honor, we'd like to talk to you off the record.

18 So they knew -- they knew this pitch that they were going to
19 make before they even were here arguing about Mr. Suen.

20 THE COURT: Are you talking about the one where Sauber
21 took --

22 MR. BICE: Yes.

23 THE COURT: -- the lead and told me and I said what I said to
24 him? Okay.

25 MR. BICE: Right.

1 THE COURT: Yeah, with --

2 MR. BICE: But they already knew --

3 THE COURT: -- everybody here.

4 MR. BICE: Right. They already knew.

5 THE COURT: Okay.

6 MR. BICE: So they asked you to order Mr. Suen here and
7 then, only then, do they come and say, oh, guess what? Now, a week
8 ago we told you about Mr. Adelson being here and we gave them dates
9 for January, but now, of course, he's not available.

10 So, Your Honor, we are absolutely entitled to his testimony
11 just like they claim they are entitled to Mr. Suen's. Mr. Suen's deposition
12 is later -- is today after this hearing.

13 THE COURT: Right.

14 MR. BICE: And there is no special rule for Mr. Adelson in this
15 regard. This letter that they have submitted, again, Your Honor,
16 respectfully, is more telling for what it doesn't contain than what it
17 actually contains, right? Your Honor, you made the statement, well, the
18 letter suggests leave him alone. I don't really read it that way, but if
19 that's the intent, that's why we should have this doctor via video
20 conferencing, where he can be examined on that contention. Because,
21 again, who's meeting with our -- is Mr. Adelson meeting with people? Is
22 he making decisions? Is he meeting with his executives? Is he able to
23 answer their questions? Is he able to meet in intervals of, let's say, an
24 hour or two at a time? Is all of that stuff occurring?

25 You'll recall, Your Honor, one of these sidebars that we had,

1 again, I complained last week that it was a mistake to have some of these
2 sidebars because now there's no record of it, I specifically asked, make
3 them produce his travel records because that's going to tell us a lot.

4 THE COURT: Well, on that point, I didn't request --

5 MR. BICE: Right.

6 THE COURT: -- the off-the-record --

7 MR. BICE: Yes, I understand.

8 THE COURT: -- meeting, but I -- if lawyers say, can we talk
9 off the record --

10 MR. BICE: Right.

11 THE COURT: -- what I -- the way I do that is, I say, of course
12 we can, but if anybody objects to it being off the record, then I'm not
13 going to do it. But nobody objected and you --

14 MR. BICE: And we did not object.

15 THE COURT: -- participated in it.

16 MR. BICE: That's right.

17 THE COURT: So we had an off-the-record discussion.

18 MR. BICE: That's right.

19 THE COURT: You know, and I also said, I think, last time we
20 were here last week, if you want to memorialize that somehow, you
21 can --

22 MR. BICE: Yes, and in hindsight --

23 THE COURT: -- on the court record.

24 MR. BICE: -- in hindsight, I should have done that. In
25 hindsight, I should have done that.

1 THE COURT: Well, you still could as far as I'm concerned.

2 MR. BICE: Because I raised -- because I raised --

3 THE COURT: You can --

4 MR. BICE: -- this very issue --

5 THE COURT: -- you still have plenty authority to do that in
6 my view, any time.

7 MR. BICE: So --

8 THE COURT: You can memorialize what we did off the
9 record.

10 MR. BICE: Yeah. To give the Court just an example of -- of
11 why we have our doubts about this is, again, looking at the earnings
12 transcript where Mr. Goldstein describes having met with Mr. Adelson
13 and he was just a little drowsy from that day, so they're going to skip this
14 one. Again, Your Honor, that's not somebody who is, quote, being left
15 alone. And that's not somebody -- that's not a description of an
16 individual who isn't having meetings, isn't doing things.

17 THE COURT: Okay. Let me interrupt you.

18 MR. BICE: Yeah.

19 THE COURT: I agree with you that the best way to do this,
20 you know, is probably not let's get another letter by 5:00 Friday. The
21 best way to do it is probably hear from --

22 MR. BICE: The doctor.

23 THE COURT: -- the doctor himself.

24 MR. BICE: Right.

25 THE COURT: And so, is the doctor available, Mr. Jacobs, I

1 guess, or Mr. Jimmerson?

2 MR. JIMMERSON: I don't know, Your Honor. I don't think an
3 inquiry has been made. At least, I've not made that inquiry.

4 THE COURT: And --

5 MR. JIMMERSON: So I don't know the answer.

6 THE COURT: -- I mean, we'll have time to do that, even after
7 the trial starts. I mean, you know, we could -- we could hear from the
8 doctor at some point it would seem to me.

9 MR. BICE: Yeah.

10 THE COURT: And I actually think that makes sense under the
11 circumstances, let's hear from the doctor and see where -- what he
12 would say, given our time that we're scheduled, which is eight weeks
13 total from today.

14 MR. BICE: Yeah, we would also --

15 THE COURT: You know --

16 MR. BICE: -- Your Honor, I --

17 THE COURT: -- what can Mr. Adelson do? What can't he do?
18 You know, I think all that comes into play here.

19 MR. JIMMERSON: Judge, this is very different --

20 MR. BICE: And I agree with that, Your Honor. And what I'd
21 like also on that regard --

22 THE COURT: Right.

23 MR. BICE: -- not just the doctor, Mr. Goldstein because Mr.
24 Goldstein is his number two. He's Mr. Adelson's deputy. He's the COO
25 of the company. He's interacting, presumably, with Mr. Adelson on a

1 daily basis and he's the one who, in the earnings call, characterized him
2 as just feeling a little under the weather. So that, again, is a vastly
3 different picture than what the picture they are asking the Court to draw
4 from this doctor's letter. That's why I call the doctor's letter conclusory
5 because it just doesn't comport with the picture that Mr. Goldstein was
6 painting.

7 And by the way, they're the same day. I don't know if the
8 Court picked up on that, the date of the letter is January 23rd. The date
9 of the earnings call is the evening of January 23rd. Those simply cannot
10 be reconciled in our mind. The pictures that they're asking -- the
11 inferences they're asking you to draw from that letter and the inferences
12 that one should reasonably be drawing from that earnings transcript.

13 So we believe, Your Honor, in fairness to our client, who is
14 being deposed today, we should be entitled, just like we were at the prior
15 time when Mr. Adelson said he should be exempt, we should be entitled
16 to cross-examine these witnesses who are saying -- at least one of them
17 who is saying that Mr. Adelson should not have to testify.

18 THE COURT: Okay.

19 MR. BICE: Then, Your Honor, we will get to the question
20 about -- because I knew you were going to ask me, the minute that we
21 decided to cite the Howard Hughes' brief, I knew you would ask me this.
22 Why shouldn't we just go with the written questions at this juncture?
23 And here's the difference, Your Honor, in that case -- in that case, the
24 case was early. It was -- the court held because these were basically
25 getting basic facts again --

1 THE COURT: Yeah. No doubt, I see all the --

2 MR. BICE: Yep.

3 THE COURT: -- distinguishing characteristics as between that
4 whole scenario and ours. But nonetheless, it seems like the -- to me, the
5 important part of this is, there's a lot of time, if you're being asked to do
6 a deposition upon written interrogatories, there's time to do that.
7 Whereas, a live deposition is -- I mean, come on, it's, you know, an hour,
8 two, three, whatever it is, four at the most probably, and it's a time-
9 certain structured type of environment. I think there's a big difference
10 between the two things, especially in light of the fact that the doctor
11 does talk about, you know, often unable.

12 MR. BICE: Uh-huh.

13 THE COURT: That seems to suggest that there's times where
14 you would be able, right?

15 MR. BICE: Right. And that's why I think, Your Honor,
16 Mister --

17 THE COURT: So that's why the written idea would be better,
18 I mean, it would work --

19 MR. BICE: Well --

20 THE COURT: -- if, you know, able time, then you devote
21 some of that time to this.

22 MR. BICE: But, of course, you can't follow up, right, and
23 you're not really getting the witness' answers, you're getting the
24 lawyer's answer, which is always the problem with -- I mean, with
25 claiming that the -- you should just live with written what amount to

1 interrogatory responses. That's what these are, these are just
2 interrogatory responses.

3 THE COURT: Right.

4 MR. BICE: But before the Court says we should have to live
5 with that, I think it is vitally important, in fairness to our client, that he be
6 entitled to challenge these witnesses. Mr. Goldstein is going to know
7 Mister -- whether or not Mr. Adelson is interfacing with executives --

8 THE COURT: I'm not telling you have to live with something
9 in that sort of way, Mr. Bice. What I'm saying is, you know, courts can
10 only do what's brought -- deal with what's brought to their attention.

11 MR. BICE: Absolutely.

12 THE COURT: What's brought to my attention is, a witness in
13 the case has taken the position through a 17-year treating physician
14 doctor that is unable to participate in a deposition process and for a
15 medical reason. That's what I think I have to deal with, right?

16 MR. BICE: Okay.

17 THE COURT: And I'm just trying to deal with that. It's -- I'm
18 not -- you know, I have to deal with what's brought to my attention. It's
19 not as though I'm trying to do anything to disable to your case or be
20 unfair to you, or either side.

21 MR. BICE: No, and I'm not --

22 THE COURT: You know, it's --

23 MR. BICE: -- and I'm not -- if the Court took it that that was
24 my suggestion, I -- no, I understand that. No, the Court -- I appreciate the
25 fact that the Court -- just like the last time we were here, the Court held

1 an evidentiary hearing to assess the nature of the claim. And, here,
2 that's all we're asking.

3 And I understand this doctor is in Los Angeles. I'm not
4 asking that they put him on a plane and get him up here for a face-
5 to-face; although, I'd like that, but we can do that by video. But Mr.
6 Goldstein lives here. So -- and he's the one who's going to be
7 interacting with him because he's -- he is number two.

8 THE COURT: All right. I think the Gold -- I think the
9 Goldstein request is far removed and attenuated from this. I mean, what
10 I'm interested in is, from a medical point of view, can Sheldon Adelson
11 be deposed, or not, or is there some sort of -- because this is odd, is
12 there some sort of way to do this given the time that we're scheduled to
13 be together, whether it's in writing. You know, we've been -- you might
14 have heard, I came up with something a few minutes ago, if he has -- I
15 said good days, you know, I mean, it's not unheard for someone to have
16 a medical condition, and we see the specifics we're not mentioning
17 here --

18 MR. BICE: Sure.

19 THE COURT: -- but it could be that a doctor would say, you
20 know, given those specifics -- and, again, I won't mention the words, the
21 condition -- maybe that's the type of thing that you have good days and
22 maybe there's a good-day window that does everything we need to have
23 happen here. You depose him, and Mr. Jimmerson gets to have his
24 client, somehow, participate, at least by video that gets played for the
25 jury. You know, everybody gets -- everybody is happy. Maybe he has a

1 good day coming up, or he has some good days, and maybe that's why
2 he can run the company because he has enough good days to still run it.
3 I don't know, but that's what the doctor might know.

4 MR. BICE: Well, I actually think, Your Honor --

5 THE COURT: Right?

6 MR. BICE: -- frankly, I think the executives are going to know
7 that even more so than the doctor knows, but, you know, all I can do is --

8 THE COURT: Well, I mean, but --

9 MR. BICE: -- state my position on that, Your Honor.

10 THE COURT: Okay. You can -- yeah, I just think --

11 MR. BICE: But --

12 THE COURT: -- keeping the -- the executives aren't doctors,
13 and even if they are, they're not -- you know, they're not doctors
14 properly, right?

15 MR. BICE: Correct.

16 THE COURT: So let's just deal with the doctors' --

17 MR. BICE: All right.

18 THE COURT: -- opinions on that, somebody who is qualified
19 to give the opinion as -- on the medical -- this is a medical issue is what it
20 is to me. So I need someone qualified to give that sort of opinion as a
21 doctor, not any other source.

22 MR. BICE: Yeah, I -- again, Your Honor, we obviously are
23 going to do as you direct. Our only point on this is, we'd like -- we think
24 it's relevant what his day-to-day is because it's highly reflective of what
25 he --

1 THE COURT: Well, that --

2 MR. BICE: -- can and can't do.

3 THE COURT: -- is something that, it seems, like this doctor
4 would know about --

5 MR. BICE: Well, I don't know. Right.

6 THE COURT: Well --

7 MR. BICE: My -- that's what I -- he's -- he's in California and if
8 they say that Mr. Adelson -- Mr. Adelson -- I don't know what they're
9 suggesting. I mean, that Mr. Adelson hasn't been in the office since
10 Christmas, I mean, that's a little -- seems to me a little bit probably
11 exaggerated because I'm not sure Mr. Adelson is typically in the office in
12 prior years during the holidays.

13 MR. JIMMERSON: He has no idea what he's talking about.
14 How can you --

15 MR. BICE: But --

16 MR. JIMMERSON: -- even say those words? You have no
17 clue what you're talking about.

18 MR. BICE: Because of other litigation, Mr. Jimmerson, where
19 Mr. Adelson is always out during the holidays in Israel.

20 MR. JIMMERSON: He has never --

21 MR. BICE: So what --

22 THE COURT: -- missed two months consecutively, Mr. Bice.

23 MR. BICE: -- so why Mr. Jimmerson continues to interrupt,
24 I'm not sure.

25 MR. JIMMERSON: The outrageous comments, the lack of

1 any evidence. There's no good faith by the lawyer --

2 THE COURT: Okay.

3 MR. JIMMERSON: -- making these statements.

4 THE COURT: All right. Okay. So here's what I'm going to
5 have to do now. I'm going to have to do something that's contrary to my
6 normal way around here.

7 MR. BICE: Yes.

8 THE COURT: I think most lawyers and you guys have figured
9 out that, as far as the strict parliamentary procedure, it's a little relaxed
10 in here. You know, I -- I don't mind that normally, but now under these
11 circumstances, I'm going to have to employ a more strict rule, at least for
12 today.

13 So, Mr. Bice, you finish.

14 And don't interrupt, unless you have an objection. And we'll
15 just continue that way. And then, Mr. Jimmerson, you know, when
16 you're back up here -- unless there's an objection, if there is, stand up
17 and say objection, and tell me what it is, and I'll rule on it. But other than
18 that, let's don't interrupt anymore. And quit talking directly to each
19 other, too. Talk only to me, okay?

20 MR. BICE: So, Your Honor, I think our point here is fairly
21 simple. A doctor's letter by itself, with a witness who has made clear he
22 does not want to give sworn testimony, should not just be accepted
23 without giving the other side an opportunity to challenge that testimony.

24 THE COURT: Okay.

25 MR. BICE: That's all -- that's what we're saying. We think

1 that that's the only fair outcome. They were here in front of you
2 insisting, outright bragging about the fact that Mr. Adelson would
3 reappear as justification for re-deposing Mr. Suen. They're getting to
4 depose Mr. Suen later today. To then say, well, now, after we get Mr.
5 Suen approved to re-depose, Mr. Adelson is suddenly unavailable. And I
6 don't know when they claim -- they say that, well, we only learned the
7 morning of the 15th that he was unavailable after they say that they were
8 giving us these dates that they had somehow been told he was available
9 for those dates. And now they're saying, well, it was clear back in
10 Christmas when he somehow became ill.

11 Again, Your Honor, there's a lot of questions here, a lot of
12 gaps, we would submit, in the events that entitle us to challenge that
13 narrative. So if the Court is going to consider a protective order for
14 them, then we would ask that the Court convene a hearing where this
15 doctor can be questioned about it. Via video is just fine by us, Your
16 Honor, because, again, if you look at the record, there's gaps in it.

17 THE COURT: Okay.

18 MR. BICE: And, no, we do not think, Your Honor -- we do not
19 think it would be appropriate to allow leave open the door that the
20 Plaintiff here, they use that word clearance, and I think that's a key word,
21 medical clearance, that somehow we would be required to proceed
22 without Mr. Adelson during our burden -- or our case in chief and then
23 suddenly Mr. Adelson would become healthy enough, if they decided
24 they needed him. That's our concern. And this sounds a lot like where
25 we were at last time.

1 THE COURT: Okay.

2 MR. BICE: That's our concern. And this sounds a lot like
3 where we were at last time.

4 THE COURT: Okay.

5 MR. BICE: Thank you.

6 THE COURT: All right. Mr. Jimmerson, any further thoughts
7 on this?

8 MR. JIMMERSON: Yes, I do have a couple important things.
9 It boggles my mind, especially with my personal involvement, that
10 opposing counsel would think of these machinations and use these kinds
11 of terms, bragging that Mr. Adelson was going to testify. This is a
12 medical condition of a man who is an important witness for the
13 Defendant, who I personally was going to direct, who I wanted to take
14 the witness stand and testify about, who has been made unavailable to
15 me because of his medical condition and for no other reason.

16 We prepared him for trial on February of 2018 before the
17 March 24th trial. And I fully intended on him giving a deposition on
18 January -- five dates we gave the Plaintiff, which they denied in our last
19 court hearing, February 19th is even existing. And when you listen to
20 the infective that the Plaintiffs offer, they're losing their cool and they're
21 losing their reason. It's not reasonable to compel someone who is not
22 well, physically well, medically well, to have to give a deposition, period.

23 And I totally agree with the Court, that if he has a good day
24 and if he's able to do so, he should do so. But that begs the question of
25 whether or not there's even entitlement to the same. And all the remarks

1 you've heard, both in terms of opposing counsel interrupting me during
2 my presentation as well as now in his opposition, did you hear one
3 sentence that we need his deposition, why we need his deposition. This
4 is an important deposition we have to have. Not one sentence was even
5 offered to that. And that is the reason, under Rule 30, why you have the
6 discretion to deny a second deposition, and in this case, a fourth
7 opportunity to testify. These were opposing counsel's words, and that
8 is, is that he does not want to give his testimony. Really? He testified
9 twice for multiple days in 2008 and 2013 before you for three days. Was
10 that somebody who wasn't willing to answer questions and give his
11 testimony under oath? Did he fight on the witness stand, "I don't want to
12 answer the question," or did he answer the question, or did he surprise
13 you by bringing out books to evidence the company's sophistication in
14 the convention world and the integrated resort world?

15 So the willingness of Mr. Adelson to testify, and him present
16 here, is certainly needed by the Defendant, and we are handicapped by
17 his absence. So when I listen to all of this matter, it's like he has to pass
18 before they're going to accept it as legitimate reason to get a pass on
19 giving a deposition they've already taken, and two days of testimony
20 already given. That -- to me, they've really lost credibility because their
21 argument is so histrionic and devoid of reason and reasonableness that
22 this is an easy one for the Court to grant. If the Court wishes to have the
23 doctor testify, we'll do so. I will just tell you, as we were sitting here --
24 Mr. Sauber, can you advise me of what you have found?

25 MR. SAUBER: Yeah. Let me just address that, Your Honor.

1 So -- so we have asked that we get an updated letter for today's hearing
2 hoping we would get it, and it just came in by electronic email. So I
3 don't know what that does to your request that, you know, we get
4 another letter this week. I have it on my phone, unfortunately. I'll --
5 when we go back to Mr. Jimmerson's I'll just print it off and -- and
6 provide it to the Plaintiffs so that -- and file it under seal so that the Court
7 can have the benefit of the updated letter, which doesn't say anything
8 different than -- in essence, then the first letter.

9 MR. JIMMERSON: And --

10 THE COURT: Okay. What I'm interested in is the parameters,
11 from a medical point of view, as to what Mr. Adelson would be capable
12 of, again, from a medical point of view.

13 MR. SAUBER: Sure.

14 THE COURT: Is it -- is it such that there may be good days
15 where maybe Mr. Adelson, himself, would feel as though -- and a doctor
16 would agree that on this particular day, guess what, condition -- it waxes
17 and wanes. The doctor says often unavailable, maybe there is a day
18 where --

19 MR. SAUBER: Yeah.

20 THE COURT: -- he is good. I'd like to know that. I'd like to
21 know is that, in fact, the situation or is it such that the medical condition
22 is such that he's not able to ever have maybe a good day that we can
23 depend upon and everybody stands ready to react to it. I need to know
24 that, I think, under the --

25 MR. SAUBER: Understood. I don't think -- because we didn't

1 have this hearing at the time we asked for the letter, I don't think this
2 letter we'll see within the hour, we'll print it out and submit it, I don't
3 think it will address that specifically.

4 THE COURT: Okay.

5 MR. SAUBER: And, certainly, we can go back to the
6 physicians who are treating him and ask that they --

7 THE COURT: Okay. I want that -- I'd like to have that
8 answered by Thursday at 5 by some --

9 MR. SAUBER: Yeah. Okay.

10 THE COURT: -- a doctor, this one or someone else who has
11 that authority and qualification.

12 MR. SAUBER: Fair -- fair enough.

13 THE COURT: Okay. Because I need to know that. Okay.
14 Anything else?

15 MR. JIMMERSON: No. I just want to indicate that the idea of
16 trying to equvalate -- equivocate the deposition request for Mr. Suen
17 and the 30(b)(6) with Mr. Adelson's deposition is very different. We've
18 never taken the deposition of --

19 THE COURT: Okay.

20 MR. JIMMERSON: -- the Rule 30(b)(6) designee. This is the
21 first time. We noticed it in October. Now, you've ruled in the Plaintiff's
22 favor. You delayed it until today, February 25, 2019, and you exercised
23 your sound discretion, which is, you know, your ruling. And it's okay.
24 We're going to certainly abide by that and appreciate the time you give
25 all of us. But it's a very different situation. We put them on notice much

1 earlier about the need to take the deposition. And even then, we were
2 careful to note the subject matters as largely constituting post 2013 time
3 period --

4 THE COURT: Okay.

5 MR. JIMMERSON: -- matters and documents that the
6 Plaintiffs have produced during the course of the last year, year and a
7 half as the subject matters that we'll speak to as opposed to rehashing
8 the questions that are already asked. Thank you, Judge. Appreciate
9 your time, sir.

10 THE COURT: All right. Mr. Bice, a couple pointed questions
11 for you.

12 MR. BICE: Yes, Your Honor.

13 THE COURT: I think I get why you want to do this deposition,
14 but just to be sure, since there's an issue as to what you intend -- the
15 scope of the dep -- of the questioning, maybe you can make an offer of
16 proof or -- on that, like --

17 MR. BICE: Sure. And we could --

18 THE COURT: -- on that, what do you want to actually ask
19 Mr. Adelson --

20 MR. BICE: Yeah.

21 THE COURT: -- in a general subject way and how it comes
22 about from discovery or whatever is relevant to the case. There's that.
23 And then, I do want to get a definitive answer from the Plaintiffs as to
24 whether you want to pursue this deposition upon written interrogatory
25 idea or not.

1 MR. BICE: Okay. So let me deal with your first question first,
2 scope of the depo, Your Honor. I believe we -- we referenced that in our
3 opposition or our opening motion.

4 THE COURT: No doubt. Yeah. If -- yeah.

5 MR. BICE: So it's fairly straightforward. Mr. Adelson -- and
6 Mr. Adelson will be the first one, I think -- you saw him on the witness
7 stand. I've deposed him many times, in one case, for ten days straight.
8 So Mr. Adelson is very hands-on. He will openly brag about, or at least
9 he used to, about the fact that he micromanaged, and he ran the
10 company. I get all that. And that's actually why his testimony on these
11 entries into these other markets is so important.

12 Because other people's -- other people -- other people aren't
13 making those kind of contacts. When someone is speaking to Prime
14 Minister Abe about going into Japan, it's not other people, it's Sheldon
15 G. Adelson. That's who is making those kind of contacts. When
16 someone is -- for -- on behalf of Las Vegas Sands is speaking to high-
17 ranking government officials in South Korea, it's Mr. Adelson. When
18 someone is contacting the U.S. State Department or the President of the
19 United States asking them can you put me in contact with high-ranking
20 government officials in Japan because we want to get an advantage in
21 that market, it's Mr. Adelson. That's why we want to depose Mr.
22 Adelson.

23 And recall, their own experts have now touted these other
24 markets and the supposed lack of paying any sort of a success fee
25 arrangement as proof that they didn't need it. Okay? Well, what kind of

1 contacts were you engaged in with those foreign governments at the
2 highest level compared to the evidence that's going to come into this
3 case about the highest-level contacts that were engaged in in China.

4 THE COURT: Okay. All right. So you're representing to me, I
5 take it, so correct me if I'm wrong, but since the analysis is similar
6 consultants, that these other scenarios, Korea, Singapore, Japan, involve
7 consultants at some level?

8 MR. BICE: Yes. And that's what their own experts have --
9 have --

10 THE COURT: Okay.

11 MR. BICE: -- done. So --

12 THE COURT: All right. That satisfies me that there's a
13 reasonable basis for the deposition, plus it was agreed and stipulated to
14 occur anyway, which --

15 MR. BICE: Yes.

16 THE COURT: -- pardon the pun, but that trumps.

17 MR. BICE: So let me -- right. So let me turn now to your
18 second question which is -- and I'm just going to blunt with Your Honor.

19 THE COURT: Yeah.

20 MR. BICE: I hate you putting me in this spot.

21 THE COURT: Okay.

22 MR. BICE: I really do. Because -- I don't want to say no
23 because if that's the only thing that I can get, something --

24 THE COURT: Yeah.

25 MR. BICE: -- is better than nothing. But I don't think --

1 THE COURT: Okay. Well, let me make it easier -- let me
2 make it easier on you, then.

3 MR. BICE: Yeah.

4 THE COURT: I am going to ask that the doctor provide some
5 live testimony here at some point. I'd like to ask the Defense earlier
6 rather than later. I mean, again, we have eight weeks of time. We don't
7 want to have this decision made probably in week five of our time --

8 MR. BICE: No.

9 THE COURT: -- starting today. But I really think that, under
10 all the circumstances, the best thing would be to have video testimony
11 from the doctor -- if it is this doctor. I'm not sure if there's other doctors.
12 Maybe there's other doctors that want to -- that would --

13 MR. BICE: Yeah.

14 THE COURT: -- be available to talk about the -- you know, it's
15 been represented to me, and I believe it to be true. I'll just tell you
16 something. It's unique in me or -- no, not unique. Strike that from the
17 record. It's -- it's built into me -- how about that. If a lawyer who I
18 respect tells me something definitively by way of an offer of proof, my
19 mindset is to believe it. That would stand -- be the same, Mr. Bice, if you
20 told me something about Mr. Suen, or if Mr. Pisanelli or Mr. O'Malley
21 did. Or for that matter, anybody that you bring into court, the other
22 lawyers on down. Okay? Because I respect you, and, you know, you're
23 an officer of the court and you stand up and tell a judge, look, this is
24 Mr. Suen's physical capability today, or something. Let's say halfway in
25 the trial he's not here a day, and maybe it's when he's testifying and he's

1 ill. I -- you know, I would -- if you came in and said he's not able to be
2 here, I would proceed with a view that, as an officer of the court, he can't
3 be here today for the reason that you've now told me.

4 MR. BICE: Right.

5 THE COURT: Just like I will do here with Mr. Jimmerson
6 saying -- you know, describing the condition and not in the office since
7 Christmas and all that. I mean, I'm going to proceed with -- if a lawyer
8 that I respect like that tells me that, I'm going to assume that's what's
9 going on.

10 MR. BICE: And I --

11 THE COURT: You know -- okay.

12 MR. BICE: Your Honor, and I don't quarrel with that. I really
13 don't. What I quarrel with, though, is suggesting that -- and you're --
14 you're not. So I'm going to say what I'm quarreling with. I'm just
15 quarreling with any argument that Mr. Suen isn't entitled to contest that
16 proposition, particularly --

17 THE COURT: Okay. So that's -- that's what I'm getting to.
18 Here's --

19 MR. BICE: Right.

20 THE COURT: Here's what I'm getting to so that you're not in
21 this quandary. Let's hear from the doctor first.

22 MR. BICE: Agreed.

23 THE COURT: And if, after hearing from the doctor, it's such
24 that there's no way to do this deposition, if that's the case under any
25 circumstance as far as we know in the, you know, current time or near

1 future, then you can tell me if you want to do the deposition upon
2 written interrogatory or not.

3 MR. BICE: Thank you, Your Honor.

4 THE COURT: Because I think part of what we should ask the
5 doctor -- and this is important to make note of, so if I don't remember it, I
6 ask the lawyers try to remember this, let's ask him about that, too.

7 MR. BICE: Yes.

8 THE COURT: You know, does he even have an opinion on
9 that, the ability. Because, I mean, conditions can be really severe. They
10 can be not severe. I don't know if Mr. Adelson goes in and out, to where
11 he has good days. And if he has good days, then, as a human being, he
12 can conduct himself --

13 MR. BICE: Yes.

14 THE COURT: -- appropriately on those days. I mean, you
15 know, I know -- I knew a judge -- I won't mention the judge's name. But I
16 knew a judge who had a really severe migraine headache problem, and
17 she built in to her law office when she was a lawyer, and in the
18 courthouse when she was a judge, a little room that was -- you go in
19 there, and it was thick wall -- little room. It had a bed in it. You just -- all
20 you did was, you go in there, and you close the door, and it's dark, and
21 it's sound proof, and you suffer with a migraine until you get better. You
22 know, and that judge had good days and bad days. Mostly good. I think
23 the bad days only come up once every month or two. But when it was a
24 bad day, she was done --

25 MR. BICE: It was bad.

1 THE COURT: -- and she was in one of those little rooms for
2 the day until they -- I think they came out with some better prescription
3 migraine headache stuff, which I'm sure she's real happy about
4 nowadays.

5 But in any event, that's just an example. You can have a
6 medical condition that on a certain day you're -- you can't do anything.
7 And I don't want to take this to some crazy logical -- you know, or maybe
8 you'd say illogical extreme, but I had a -- my 47-year-old sister got
9 cancer, and I watched her die over six months. She had good days
10 where we did stuff -- a lot of stuff together. And any casual observer to
11 those good days would say, hey, these two are just brother/sister having
12 a good old time. Then there were days where she would not be able to
13 get out of bed, and we would have to do everything that a human being
14 would need to have tended to on that day. I -- you know, so we can go
15 on with these kind of examples.

16 MR. BICE: Yeah.

17 THE COURT: I don't know, from a medical point of view,
18 what we're really dealing with here. Is it -- maybe the idea that I came
19 up with -- I think this one was my idea, but I'm not sure -- that we all just
20 are on standby, and that -- you know, if the doctor says, no, he has good
21 days, that we -- you know, Mr. Adelson, at, you know, even 9, 10 in the
22 morning, he and his wife realize today is a good day, we act, and
23 somehow we figure out a way, even after we get started maybe --

24 MR. BICE: I --

25 THE COURT: -- if you want to. You know?

1 MR. BICE: Yeah. Your Honor, I appreciate that.

2 THE COURT: I mean, who knows how much --

3 MR. BICE: You know, but -- but, obviously, if you put your --
4 if the Court puts itself into our shoes or Mr. Suen's shoes, you know,
5 we're -- our concern would, of course, be as -- those good days wouldn't
6 happen until after our case is closed. That's our concern. So we don't
7 really think that we want to just sort of live on the edge of are we entitled
8 -- are we going to get this information or not. We think we're entitled to
9 it.

10 THE COURT: Well, I mean, floating through this is this whole
11 idea to have a fully contested, you know, hearing on it. And, you know,
12 my view is if we have a doctor whose qualified to give the opinion, I
13 mean, that's it. That's the opinion.

14 MR. BICE: Okay.

15 THE COURT: Let's -- but having him called as a witness gives
16 you some, I think, procedural due process on this point.

17 MR. BICE: We appreciate -- we appreciate the Court --

18 THE COURT: You know.

19 MR. BICE: -- doing that so that we can -- so that we can have
20 an opportunity to find out what exactly are those medical parameters
21 and how we, including the Court, can best maneuver around that. I
22 mean, if the doctor --

23 THE COURT: Yeah.

24 MR. BICE: -- says he is incapable of doing anything, and
25 incapable of answering questions, then we'll know that.

1 THE COURT: Right. What I mean --

2 MR. BICE: But right now, we don't know anything.

3 THE COURT: -- by that, Mr. Bice, is I don't -- I don't want to
4 call executives and call, you know, Mrs. Adelson and everybody else to
5 try to figure -- I mean, let's deal with what we have. It's a medical --

6 MR. BICE: Well, I -- yeah.

7 THE COURT: It's a medical issue. Let's deal with those that
8 are qualified to give medical opinions.

9 MR. BICE: I -- Your Honor, I understand that. My only point
10 about that was just I wanted to be able to get at what his day-to-day
11 activities were in terms of running the company, and I thought that the
12 executives would be in the best position to answer that. If it turns out
13 that this doctor is the one in a position to answer that, well, then, we'll
14 know that. But that wasn't -- that, I guess, wasn't my sense. Maybe I'm
15 wrong on that. But I appreciate the Court willing to let us have that
16 opportunity so that we can figure out what permissible scope and what
17 the parameters ought to be.

18 THE COURT: Okay.

19 MR. BICE: Thank you.

20 MR. JIMMERSON: I had just one request, Your Honor, that I
21 think is important. I would ask, first of all, and to make it very clear, that
22 the Court is ordering that the written documentation that we're
23 supplying to you is under seal and is protected by the stipulation order
24 regarding confidentiality.

25 THE COURT: Not only that -- that's under seal. Yes, you

1 have that order. But the video conference with a doctor, maybe it's
2 going to be Dr. Buchbinder, likewise will be under seal.

3 MR. JIMMERSON: Right. And I had one additional --

4 THE COURT: It will be a confidential court hearing on this
5 point.

6 MR. JIMMERSON: -- request. And that additional request is
7 that the written documentation, and the videotape, if that be the case,
8 not be shown to Mr. Suen or to Round Square's corporate
9 representative. It certainly can be orally communicated to the client.
10 We, at least, have remedies, being officers of the court, that the Plaintiffs
11 would not take this information and be mischievous with regard to it or
12 misuse it. But we don't have that same ability over a Hong Kong
13 resident who's here in the United States only for this trial and couldn't
14 appear for a deposition in November when it was noticed for. I'm not
15 trying to deprive or drive a wedge in terms of information. I don't want
16 the written documentation or the written tangible information here going
17 to somebody that this Court has no control over beyond what would
18 eventually be a vacuous order to show cause when he doesn't appear.
19 So I just would ask for that request. And, also, just a very strict order
20 that everyone here listening to my words and to Your Honor's words
21 adhere to the confidentiality that's applicable to my client's condition.

22 THE COURT: All right. Anybody else want to say anything?

23 MR. BICE: Your Honor, Mister -- I'm not quite sure what the
24 request is. I mean, Mr. Suen is a party.

25 MR. JIMMERSON: Attorneys' eyes only --

1 MR. BICE: He's --

2 MR. JIMMERSON: -- is the request, Mr. Bice.

3 MR. BICE: I'll wait until I'm allowed to speak.

4 I'm unclear on what it is. Mr. Suen is a party to the case,
5 Your Honor. He is subject to the Court's jurisdiction. We have a
6 protective order in place. We are -- we are honoring the terms of that,
7 just like we are honoring --

8 THE COURT: Right.

9 MR. BICE: -- the Supreme Court rules.

10 THE COURT: I just would expect everybody to act in --

11 MR. BICE: Exactly. And --

12 THE COURT: -- in conformity with the Court orders.

13 MR. BICE: And here's, obviously, part --

14 THE COURT: That's all I need to say.

15 MR. BICE: Sure. Here's part of our concern, Your Honor, is
16 you saw over the weekend -- I think our brief is in full conformity with the
17 rules. And a demand was made that it be unfiled. We were accused of
18 doing something wrong when we had done nothing wrong. That's what
19 we want to avoid, is -- is this attempt to create the appearance that we
20 have done something improper when we absolutely have not. We
21 absolutely complied with the Supreme Court rules on this.

22 THE COURT: Okay. All right. You want to say something
23 else?

24 MR. JIMMERSON: Yes, Your Honor. I'd like to have you
25 treat the report like you would treat a child interview report that would

1 be held in family court and that you've done here in the RJC, with that
2 care, where it's on the left-side filing, that it doesn't find itself as a filed
3 document in the general court file, with that protection. And the reason
4 for the treat -- the eye -- attorney eyes only matter is because I think it's
5 the kind of information that does not affect Mr. Suen's case for quantum
6 meruit damages. And the Court doesn't exercise the same amount of
7 control as it does over the lawyers who are committed to practice before
8 you.

9 THE COURT: Okay. Well, I'll give you the decision on it at
10 the whole shooting match here. The Plaintiffs have a motion to compel
11 the deposition of Sheldon Adelson. There's a corresponding Defense
12 motion for protective order to prevent Plaintiff from deposing or
13 re-deposing Mr. Adelson. Both of those motions, based upon the
14 activity here today, have to be deferred for a definitive ruling as I do feel
15 now that the Court would need to have, in order to effectively make a
16 decision on the full scope of these motions, a hearing -- evidentiary style
17 hearing where a doctor is produced who's qualified. It could be
18 Dr. Buchbinder, but I'm not sure what other doctors might be tending to
19 Sheldon Adelson. But I'd like to have that hearing sooner rather than
20 later.

21 I have to rely upon the Defense lawyers to reach out to their
22 client and the doc -- and find a doctor or doctors who would be available
23 for this. But let us know -- I'd like to have that hearing sooner rather than
24 later, like I've said a few times. So that means -- my preference would be
25 to have it before we start the trial. But, you know, I'll leave it to you as

1 officers of the Court to -- you know we want to do this, and get on it, and
2 make it happen. And that can be by video conference.

3 So all written letters from doctors, this doctor or any other
4 doctors, that's always going to be sealed, the letters themselves. And
5 then this court hearing -- evidentiary court hearing on this point,
6 likewise, I'll -- that will be a confidential hearing, not part of the public
7 record, okay, however we do that. Because I know that the doctor is
8 going to talk specifically about the items that I want to, in fairness,
9 protect, that I would protect for anyone; and that is the specifics of a
10 medical condition themselves. I don't think we can have the hearing and
11 dance around that. It could be the doctor has to talk about those
12 diagnosed conditions and what effect they have on a human being or,
13 more specifically, this human being, Mr. Adelson. So I need to do that.
14 That's especially in light of the fact that -- I realize the Plaintiffs are asking
15 for the deposition but, specifically, the Defense is asking for a protective
16 order. And because you're asking me for an affirmative protect style
17 order, I need to have the best evidence to give me a comfort level with
18 the scope of such an order if I were to grant your request.

19 So with that in mind, I'd be interested -- just so we don't have
20 to have another hearing after we have the hearing I'm asking that we do
21 have, I think that I would want a doctor, whether it's Buchbinder or
22 anyone else -- and if it's more than one doctor than so be it to be part of
23 this evidentiary hearing. I want -- I'm interested what is -- what is the
24 nature of the condition the best the doctor would know it now. Is it such
25 that, as Dr. Buchbinder does say, he's often unavailable or unable to

1 participate, meaning that there might be windows of opportunity where
2 he could? Because as a Court, under all those circumstances, and given
3 the expense -- expanded discovery, the Korea, Singapore, Japan issues, I
4 think there's a legitimate purpose for the deposition. And though the
5 Defense, in part, has said we will -- we'll withdraw our defense on
6 damages having to do with Korea, Singapore, Japan as it relates to
7 Mr. Adelson's testimony, I still think the Plaintiffs, nonetheless, even with
8 that, have a right, given the stipulation, to have a deposition of Adelson
9 -- to have the deposition.

10 So the only thing standing between the actual deposition
11 happening and not happening is this medical issue because there's a
12 stipulation and an agreement that he would be deposed. And so I'd like
13 to proceed with a view towards having that happen if it can happen on
14 the medical front. Again, as a Court, I don't know if he has these good
15 days where maybe we can -- maybe the lawyers would be willing to --
16 even if we had to let the jury take a day off if we heard in the morning
17 that it's a good day for Mr. Adelson in week one or two of the trial even.

18 You know, because, I mean, I'll say that part of my analysis
19 here is, what I'm trying to avoid is this. And I'm not assigning any
20 sinister on Mr. Adelson or the Defense. I'm really just saying, as a
21 course of human events and medical ways of being, what if, in week
22 three or four, now he's available, and he's able to travel, and he's able to
23 conduct business affairs, and it's apparent, and his doctors would agree,
24 that he can now participate. You know, I'm just trying to be fair here.
25 And, Mr. Jimmerson, you've said that if that were to happen, that the

1 deposition would be a condition precedent. That's my words for what
2 you said.

3 MR. JIMMERSON: I understood, and that's what I
4 represented.

5 THE COURT: A condition precedent of his trial testimony.

6 MR. JIMMERSON: That's what I represented, Judge.

7 THE COURT: So I appreciate that, actually. So that's good.

8 Anyway, I need to have this little hearing to figure out what
9 we can do on this. Does he have good days, no good days. And for that
10 matter, even the idea of the deposition upon written interrogatory. Is he
11 cognizant or able to, you know, put his mind to answering, you know,
12 written discovery, really, is what it would be. And so there's that, too. I
13 just don't know the answer to these questions more definitively until I
14 hear from a doctor who's willing -- you know, would be willing to give
15 me that opinion or set of opinions. Let's see. So I need to do that.

16 MR. JIMMERSON: Judge, what we do is we would
17 communicate with you --

18 THE COURT: Oh.

19 MR. JIMMERSON: -- after we've spoken to the doctor as to
20 schedule and availability.

21 THE COURT: Okay. Good.

22 MR. JIMMERSON: That's all I know how to do it.

23 THE COURT: Something else for the record, because it came
24 up. Underlying all this, I did say that because the lawyers stipulated to
25 the depositions, in my view, of Suen and Adelson, that that's it. I don't

1 need to get into any legal court or any other analysis. But I do want to
2 say that I agree that, as far as the Court's concerned, the Court has been
3 aggressive with trying to determine these -- this issue for some time
4 now. And I will share further with you that I left here on numerous
5 occasions thinking, well, I wish they would get around to doing this
6 Adelson deposition, and what's happening with Mr. Suen. I mean, I
7 would leave with this in my mind a lot.

8 So it's too bad that this didn't happen earlier, but I am
9 convinced that in December, the 4th and 14th, the Defense did -- I have
10 the document here. It's our Court Exhibit 1. The Defense did give
11 January 16th through January 18th, January 24th through January 25th
12 as available dates for Mr. Adelson to be deposed. And so I -- you know,
13 it's too bad that in earlier December or mid-December that date didn't
14 get set. I wish it would have. It would have either brought the issue
15 more to a head earlier that we're dealing with now, or the deposition
16 would have happened. I don't know. I don't know because I've been
17 told that he hasn't been in the office since Christmas. These dates are
18 right after Christmas, or a month and some -- on January 25th, a month
19 after Christmas. So who knows what would have actually happened.
20 But the point of it is, I, you know, wish something would have happened,
21 you know, before now. And I'm just trying to deal with where we're at
22 now.

23 So the balance is what it is. You know, I'm trying to still
24 accommodate this. And we'll just have to go from here and see what
25 happens. Anybody want to say anything else on this?

1 MR. SAUBER: Judge, just a couple points. As it stands now,
2 we have absolutely no expectation -- we don't have any expectation that
3 Mr. Adelson will be at trial witness. That's what we expect from his
4 medical condition. So --

5 THE COURT: Okay.

6 MR. SAUBER: -- that's why Mr. Jimmerson said, you know,
7 should circumstances change, which would surprise us, you know, we
8 would think it's only fair, then, to allow the Plaintiffs their opportunity.
9 The idea -- and you've seen this here. Mr. Adelson would rather have
10 himself appear as a witness than have Mr. Jimmerson and I appear here.
11 So there's no notion that he doesn't want to come and testify. And right
12 now, it's our expectation he will not. So we -- we will arrange to see if
13 we can get a doctor who's treating him to appear for a video discussion
14 as soon as -- as soon as we can. But it may be, in many respects, a moot
15 point as to whether he can sit for a deposition if, in fact, as we think, it's
16 highly, highly likely he won't appear as a witness at the trial in any event.
17 But --

18 THE COURT: Okay. And in regard to the letter, I think it was
19 on your phone --

20 MR. SAUBER: Yes, sir.

21 THE COURT: -- the letters? Yeah. I mean, you could -- of
22 course, you could file that under seal, but that would alleviate the 5:00
23 Thursday issue. If you have the letter --

24 MR. SAUBER: Under --

25 THE COURT: -- you have the letter.

1 MR. SAUBER: Understood. Understood.

2 THE COURT: You know.

3 MR. SAUBER: So that the -- the 5:00 Thursday for another
4 letter is off the table --

5 THE COURT: Yeah.

6 MR. SAUBER: -- and what is your request to us is to see if
7 we can get a doctor?

8 THE COURT: Well, my thought is, since you the letter, go
9 ahead and file the letter --

10 MR. SAUBER: Absolutely.

11 THE COURT: -- so -- but we still have to have the hearing
12 that I'm talking about.

13 MR. SAUBER: Understood.

14 THE COURT: Okay.

15 MR. SAUBER: Understood.

16 MR. BICE: Well, Your Honor, I'm a little -- I'm a little
17 confused. So they say that they have another letter from, I assume -- I
18 don't know if it's the same --

19 THE COURT: It's on Mr. Sauber's phone.

20 MR. BICE: -- doctor. Yes. We'd like to see that letter and
21 then --

22 THE COURT: You're going to see it. He's going to file it,
23 probably today, under seal.

24 MR. BICE: Very good. And then I know that the Court had
25 some questions that they were going to provide some sort of a

1 explanation, I mean, in advance of our evidentiary hearing. Is the Court
2 saying they don't have to? We're just going to have our evidentiary
3 hearing? I guess that's my --

4 THE COURT: Well --

5 MR. BICE: -- confusion a little bit.

6 THE COURT: -- what I said was --

7 MR. BICE: Because I'd like to know --

8 THE COURT: -- is that -- what I said, I think, is an
9 accommodation to that in some ways. That I would hope that the
10 doctor that's produced, again, whether its Buchbinder of someone else,
11 would be able to relate to us, based upon either what the doctor knows
12 today or can come to find out prior to the doctor participating in the
13 hearing, you know, what Mr. Adelson can do and not do, and what he
14 has been doing and not doing. I think that's fair under --

15 MR. BICE: Right.

16 THE COURT: -- all these circumstances.

17 MR. BICE: Okay. And the other -- the only other thing I want
18 to raise with the Court, since they have raised it, is, under the terms of
19 our protective order, we have the right to show information to consulting
20 experts. We are likely to show these letters to a consulting doctor who
21 will assist us in cross-examining the doctor who is going to attest that
22 what he is describing renders Mr. Adelson unable to testify. So I just
23 want that to be -- you know, we have that right, I believe, under our
24 protective order. We'll maintain confidentiality on it, but it just sort of
25 dawned on me that we're -- obviously, neither Mr. O'Malley, myself, or

1 Mr. Pisanelli understands some of the --

2 THE COURT: So are you envisioning some kind of hearing --

3 MR. BICE: -- terminology --

4 THE COURT: -- where you call your own doctors to dispute
5 their doctor?

6 MR. BICE: I don't think so. I don't think we'll -- I don't think
7 we'll need to do that unless -- if we get a doctor who says, listen, this is,
8 you know, not meritorious in any sense, then we might have to
9 reevaluate that. I was envisioning more -- we need somebody -- we're
10 not doctors. We don't -- the lingo that's used and the drugs that are
11 referenced and the like, we need somebody to guide us on that a little bit
12 to allow us to have an effective examination.

13 THE COURT: Okay. And that sounds reasonable to me.

14 MR. BICE: Yeah. Thank you.

15 MR. SAUBER: So, Your Honor, just to follow up on that, so
16 we're clear, my -- my expectation as to this video conference is that the
17 Court would inquire of the doctor who we produced, and that this doctor
18 would not be subject to what Mr. Bice calls cross-examination when he
19 appears --

20 THE COURT: Well, I didn't envision it that way. So let me be
21 clear about that, too. It's a -- an evidentiary hearing is one that
22 everybody gets to participate in. As I understand it, a doctor or doctors
23 will be produced on videoconference who are qualified and have
24 personal medical knowledge of Mr. Adelson's condition relevant to all
25 the things we've been spending the last couple hours talking about here,

1 and will give an opinion to the Court as to whether he can sit for a
2 deposition under any circumstances at all, even on this -- I'm going to --
3 he does have good days sort of thought. And/or whether he can actually
4 participate in regard to a deposition upon written interrogatory or written
5 discovery, whether he can do that even --

6 MR. SAUBER: Yes. Right.

7 THE COURT: -- since these are the things that are on the
8 table.

9 MR. SAUBER: Right.

10 THE COURT: And I just want -- you know, I want to get the
11 opinion from that doctor. I've mentioned, and so I hope you took note,
12 that I do agree, I think it's reasonable for that type of doctor to either -- if
13 they're already aware of what he's been doing say -- because it's been
14 mentioned he hasn't gone in the office since December, great. I'd like to
15 have that related as to what he's been doing. And I'm not trying to get
16 into the -- you know, sad details of someone's medical condition unduly,
17 but I think that's part of what we should look at. The theory being if he's
18 had good days and bad days, since Christmas even, you know, if he's
19 done some meaningful things for the business, you know, maybe he can
20 have a day like that to do the deposition.

21 MR. SAUBER: Understood.

22 THE COURT: You know, so that's the idea here. So I guess
23 this is -- to clarify, I want to make sure you guys understand, I'd like for
24 you to -- if a doctor -- if you don't have a doctor who's aware of what he
25 has been doing say since Christmas, I'd like that doctor to become aware

1 of that and be able to relate that at the hearing. Okay?

2 So it is an evidentiary hearing, meaning that I think that you
3 -- it's your request for a protective order. You're asking me to enter a
4 court order where you've previously stipulated and agreed that he would
5 be subject to deposition to now preclude that. And I would do that if I
6 felt, from a medical point of view, that was the right choice. What I'm
7 saying is, I'm not sure that's the right choice as I sit here from the letter
8 I've received, and I haven't seen the one in your phone yet. But, I mean,
9 and so it's your motion, and I think you have to bring forth evidence on
10 it. And because it's an opposed motion, in fact, it's contrary to their
11 motion to compel the same deposition you want the protective order, of
12 course they have a right, I think, to question the doctor. That Plaintiffs
13 have a right to question the doctor. And then, when all said and done, I
14 make a decision on the evidence as presented in that videoconference.

15 MR. SAUBER: Okay. That --

16 THE COURT: That's it.

17 MR. SAUBER: Look, with -- I understand. I hear the Court's
18 ruling. With respect, we would object to their cross-examining a doctor
19 who appears to --

20 THE COURT: Well, he called it cross-examination. It --
21 technically it is, right? It's an adverse --

22 MR. SAUBER: Yes.

23 THE COURT: It's probably an adverse witness, I mean, to
24 them.

25 MR. SAUBER: It's hard to --

1 THE COURT: To them, right? I mean, they want to do the
2 deposition, so they have to view him as adverse. So to the extent that's
3 the case, then by operation of the -- pull the dictionary out, definitional
4 sense, it's cross-examination, okay?

5 MR. SAUBER: Okay. With all due respect, we'd object to that
6 but we understand your ruling on it.

7 THE COURT: Okay.

8 MR. JIMMERSON: Judge, and --

9 THE COURT: All right. Anything else for -- go head.

10 MR. JIMMERSON: If the Plaintiffs chose to have a physician
11 or physicians review the records, I want the physician to sign off on the
12 confidentiality agreement, and I want to see a copy of it so that we know
13 that they are bound by the terms of the agreement.

14 MR. BICE: I don't know -- we're going to comply with the
15 protective order. I don't know that he's entitled to know the identity of
16 any consulting experts. I don't think that -- I think the protective order
17 contemplates otherwise. We'll be happy to -- we're going to make sure
18 we comply with the order.

19 MR. JIMMERSON: But the order, Todd, respectfully, requires
20 you to obtain the commitment in writing from the people you show
21 these documents to, that they will honor the terms of the confidential --
22 that's all I'm asking for.

23 MR. O'MALLORY: We will honor whatever the document
24 requires.

25 MR. BICE: We think -- we think that it does require that. But

1 you said -- my apologies. I don't want to address Mr. Jimmerson.

2 THE COURT: Okay. It requires that that be done before you
3 show anything to doctors, then do it before --

4 MR. BICE: Correct.

5 THE COURT: -- as a condition before showing it to anybody.

6 MR. BICE: But not that we have to share the --

7 THE COURT: Right.

8 MR. BICE: -- Exhibit A, I think it's called under the protective
9 order, with the other side.

10 THE COURT: Or anything else that --

11 MR. BICE: Or --

12 THE COURT: -- comes to our attention --

13 MR. BICE: That's right.

14 THE COURT: -- on this point.

15 MR. JIMMERSON: That you take possession of Exhibit A.

16 MR. BICE: So I want to make sure, Your Honor -- I want to
17 make sure that I know what we're getting. So we've got the first letter.
18 We're getting the second letter.

19 THE COURT: Yeah.

20 MR. BICE: Are -- are we getting a declaration from this
21 doctor?

22 THE COURT: The second letter, I know Mr. Jacobs is going
23 to cause this to occur because we talked about it already.

24 MR. BICE: Right.

25 THE COURT: It's a declaration under perjury. Remember I

1 talked about that --

2 MR. BICE: Yes.

3 THE COURT: -- an hour ago or more?

4 MR. BICE: Okay.

5 THE COURT: That's what it is.

6 MR. BICE: Right.

7 MR. SAUBER: That's what I tried to explain. That letter came
8 in as we were having this discussion.

9 THE COURT: Okay.

10 MR. SAUBER: So we have not asked the doctor to write a
11 line at the bottom saying, you know, I declare --

12 THE COURT: Okay. Well, that shouldn't be that difficult,
13 right?

14 MR. SAUBER: I don't know. We can certainly ask for it. But
15 just to be clear, the letter that I have --

16 THE COURT: Well, from the time I asked for another letter to
17 the time you had it in your phone was, what, five minutes? So it seems
18 like --

19 MR. SAUBER: It -- it came in literally as you were saying we
20 should --

21 THE COURT: So put two more minutes in on the declaration
22 part.

23 MR. SAUBER: So we -- we'll submit the letter we have. It
24 does not say under penalty of perjury just because it came in as we were
25 discussing it.

1 THE COURT: Okay. Well, ask him to add that. In all
2 sincerity, we're interested in it being the appropriate style declaration
3 under these circumstances. Okay. Great. So that's still done by today,
4 most likely?

5 MR. BICE: Thank you, Your Honor.

6 MR. SAUBER: All we can do is ask, so --

7 THE COURT: Okay.

8 MR. SAUBER: -- yes, sir.

9 THE COURT: All right. Who's taking the lead on the Defense
10 side here on getting a doctor to be -- have available for this hearing? Is it
11 Mr. Jacobs or one of you guys?

12 MR. SAUBER: We'll work with Mr. Jacobs to -- to do it.

13 THE COURT: Okay. Because, I mean, you know, we all work
14 together, I think, great. And I don't expect anything different to happen.
15 But we need to know this. In other words, this is a bit of a priority item
16 here.

17 MR. SAUBER: I -- I didn't take it any other way than that.

18 THE COURT: So -- so within the next couple business days, I
19 think, is reasonable. Do you agree that it's reasonable to have identity of
20 such a doctor and availability for the videoconference?

21 MR. SAUBER: I have been sitting here the whole time, and I
22 do think that's reasonable.

23 THE COURT: Okay.

24 MR. SAUBER: What we get is -- you know, we'll make every
25 effort to do it.

1 THE COURT: Okay. How about this? If, for some reason,
2 you don't have anything within a couple business days, let's at least
3 have a phone conference --

4 MR. SAUBER: Absolutely.

5 THE COURT: -- or something I can involve myself in on this.

6 MR. SAUBER: No problem.

7 THE COURT: Okay? Okay. Okay. There's that -- those two
8 motions. And we have one more. Anybody need to take a comfort
9 break?

10 MR. JIMMERSON: Yes, Your Honor.

11 MR. SAUBER: Your Honor, could we?

12 MR. BICE: Could we?

13 THE COURT: Yeah. Comfort break.

14 MR. SAUBER: Thank you.

15 THE COURT: Okay. Let's come back at 11:35.

16 MR. SAUBER: Thank you, Your Honor. Thank you very
17 much.

18 THE COURT: 11:35 for the next motion.

19 [Recess at 11:21 a.m., recommencing at 11:39 a.m.]

20 THE COURT: Now we'll take up the Defense motion.

21 Defense motion to amend case caption to identify Las Vegas Sands, LLC
22 as the named Defendant. I read it and I see the whole history of
23 everything and I see the opposition, so go ahead.

24 MR. JIMMERSON: Thank you, Judge. This is an important
25 motion by the Defendant by virtue of an error that was made by the

1 Defendant through prior counsel. And everyone acknowledges the error.
2 No one on behalf of the Plaintiff, you know, quarrels with the fact that
3 prior counsel inadvertently stated the wrong corporate entity to be
4 replaced from LVI -- LVSI. It should have been LVS, LLC, the successor
5 to LVSI and not Las Vegas Sands Corporation.

6 And from the organizational chart, everyone sees that the
7 holding company is Las Vegas Sands Corporation and below it is several
8 different entities, one of which is LVS, LLC, formally known as LVSI, who
9 was the original named Defendant by the Plaintiff in this case when it
10 filed its lawsuit in October of 2004. The miscommunication between the
11 client and its lawyer that led to the misstatement that the entity should
12 be LVSC, instead of what it should have been, which was LVS, LLC, the
13 successor of LVSI is just that.

14 It's a mistake that was recently, I'd say the last couple
15 months, picked up. We have communicated this information to Mr.
16 O'Malley directly for now a couple of months. We provided a lengthy,
17 lengthy set of exhibits, which you've seen that demonstrate the truth of
18 what we're saying and we ask the Court amend the caption and allow the
19 substitution of the Defendant to the proper Defendant.

20 And I will address the opposition item by item, but let me say
21 that there's a couple of points that are very, very important that
22 everyone can see. First of all and most importantly, from the Plaintiff's
23 perspective, this is not an attempt to substitute the Defendants that then
24 would not be able to respond to a monetary judgment, even up to the
25 alleged \$337 million claim of damages through December of 2022, which

1 is the current Braddock report as at least I understand it, when he
2 submitted it on September 14th of 2018 and then gave his deposition
3 thereafter, that I attended.

4 Secondly, it does speak to the issue of insurance, which is
5 one of the reasons it's important to the Defendant and should have no
6 heartache to the Plaintiff. In 2001 and 2002, when the actions, services
7 that the Plaintiff claims was provided to the Defendant, LVSC, the current
8 named Defendant, mistakenly named Defendant didn't exist.

9 And in 2005, March, this Court, your predecessor Court
10 dismissed LVSC from the lawsuit, specifically because it wasn't around
11 during the operative time and prior to the commencement of this
12 litigation in 2004. In addition, of course, from a -- the insurance that
13 would assist the Defendant to respond to a money judgment was
14 therefore, of course, purchased by LVSI and then later, LVS, LLC, where
15 it remains today.

16 And that is a fact that I'm able to articulate to the Court as
17 factually being accurate and why it's certainly significant financially to
18 the Defendant to have the properly named Defendant as the Defendant
19 in this case and as reflected by the caption. So those are the facts.
20 Those are the evidence. It's well-known.

21 When I look at the opposition, listen, from their perspective,
22 there's -- the most important thing is not to have a new entity that cannot
23 respond to a judgment. They don't quarrel in any of their opposition that
24 structurally, corporately what we've stated to them and long before we
25 submit it to you is accurate.

1 They don't quarrel that LVSC didn't exist when this lawsuit --
2 the events occurred in 2001 and 2002. They don't quarrel with the fact
3 that Judge Levitt had dismissed LVSC as a Defendant in March of 2005
4 and they of course don't speak to and don't have any reason to contest
5 the representations made that the insurance that would affect and cover
6 this claim was in LVSI's name later under NRS 92A amended to LVS,
7 LLC.

8 THE COURT: Okay. Let me ask you, of course, a few
9 questions now on this. It seems to me first of all that this a discretionary
10 call for me. If you look at NRS 92A.250, talking about effects of mergers
11 or conversions.

12 MR. JIMMERSON: Well, it's discretionary, except that your
13 discretion, respectfully, is not to ever affect LVSC, the wrongly named
14 Defendant. The discretion would be whether or not to leave it as LVSI or
15 LVS, LLC, but not to substitute in the wrong entity.

16 THE COURT: Okay. Well, you know, the Rule 3(e) says a
17 proceeding may be continued as if the conversion had not occurred --

18 MR. JIMMERSON: That's right.

19 THE COURT: -- or the resulting entity may be substituted in,
20 so that's why I say it's discretionary --

21 MR. JIMMERSON: Right.

22 THE COURT: -- it seems on the face of this rule. So in trying
23 to make sense of this kind of a request, obviously the Plaintiffs bring up
24 that Mr. Adelson said at trial last time --

25 MR. JIMMERSON: Right.

1 THE COURT: -- things consistent with the case caption being
2 Las Vegas Sands Corp.

3 MR. JIMMERSON: That's right.

4 THE COURT: And also, of course, the Nevada Supreme
5 Court, when they framed the issue in an appellate sense said whether
6 LVSC four times and then had the issue --

7 MR. JIMMERSON: Agreed.

8 THE COURT: -- there. So everybody proceeded on that line
9 and there's a judgment against LVSC is the law of the case argument the
10 Plaintiffs make. So in going into this, you know, I'm just sharing with
11 you that I'm thinking to myself well, what's really going on here? Is
12 there some reason for this that now would do one of two things that I
13 would try to avoid, okay? One thing would be is there some prejudice to
14 the Plaintiffs in some way that I just don't see here?

15 MR. JIMMERSON: Right.

16 THE COURT: Because I'm not going to sit up here and act
17 like I know everything about corporate, you know, existences and how
18 judgments are paid and all that, you know. So is there any prejudice of
19 doing this, under than sort of administrative ministerial-type change as
20 the Plaintiffs are concerned? In other words, is there any prejudice at
21 all --

22 MR. JIMMERSON: Right.

23 THE COURT: -- with the Plaintiff? Some additional discovery
24 that now needs to take place, because of this change, some effect on
25 collectability of a judgment that now takes place because of a cha -- you

1 know, is there any prejudice to them. That's what I'm --

2 MR. JIMMERSON: Understand.

3 THE COURT: -- I'm just trying to figure out what really is
4 going on here.

5 MR. JIMMERSON: I've asked the same question, because I
6 would appreciate the concern that the Plaintiff has and would have --
7 normally have, what you would have, if you were representing the
8 Plaintiff with regard to the Defendant who came and told you this. But
9 let me just say my answer to you is I have taken all the steps that I
10 believe to avoid any prejudice and I will speak to that.

11 First, factually, what I'm telling you is correct in terms of LVSI
12 converting to LVS, LLC and having no relationship to LVSC and LVSC
13 having been dismissed from this case in March of 2005.

14 Second, as you pointed out, Mr. Adelson has asked LVSC as
15 the successor to LVSI and he says, yes, not thinking and not being
16 careful to know that in fact, that is a factually incorrect --

17 THE COURT: Okay.

18 MR. JIMMERSON: -- information and we provided the
19 documents to Plaintiff. They're not going to contest today that LVSC is a
20 successor to LVSI. It's not true. LVSI was a predecessor to LVS, LLC as a
21 successor unrelated to LVSC, which is the holding company, parent
22 company above that.

23 THE COURT: Okay. So it sounds to me -- I read the whole
24 scenario, the history of the mergers and all the --

25 MR. JIMMERSON: Right.

1 THE COURT: -- what do you call it, the conversions and
2 things.

3 MR. JIMMERSON: Right.

4 THE COURT: It --

5 MR. JIMMERSON: So let me --

6 THE COURT: -- seems to me that even before the last trial --
7 and you say that the prior counsel made this mistake. In the light most
8 favorable to you, there's mistakes that have been made. The lawyer
9 made a mistake. Mr. Adelson made a mistake on the stand.

10 MR. JIMMERSON: The company made the mistake.

11 THE COURT: Right. Everybody's making mistakes on this. I
12 don't have any problem with fixing mistakes. It would be sort of odd to
13 not want to fix a mistake --

14 MR. JIMMERSON: Agreed.

15 THE COURT: -- if you're a Judge. The question, though is is
16 there something -- I'm just asking you, because I don't know. Is there
17 something more to it than fixing a mistake to where there's any real
18 effect on the Plaintiffs at this stage? A prejudicial --

19 MR. JIMMERSON: The answer is none. The answer is none.
20 Based upon all the information that I have read, I am personally not, you
21 know, couns -- you know, insurance counsel. We have -- the company
22 has other insurance counsel. What I would say to the Court --

23 THE COURT: Okay.

24 MR. JIMMERSON: -- because again, I appreciate the
25 sphincter muscle nervousness of the Plaintiff and I'm totally with you on

1 it -- would be this -- because of the desired insurance coverage that
2 presently may not be available --

3 THE COURT: Uh-huh.

4 MR. JIMMERSON: -- may or may not. I don't know, because
5 of the wrong Defendant being here. If the Court would --

6 THE COURT: Uh-huh.

7 MR. JIMMERSON: -- grant this motion, as is appropriate in
8 light of the error that was made, we would be willing through board
9 resolution or whatever it would take, to have LVSC guarantee in
10 writing --

11 THE COURT: Okay.

12 MR. JIMMERSON: -- the LVSI -- excuse me, the LVS, LLC
13 adverse judgment, if any there be arising from the upcoming trial.

14 THE COURT: Okay. So it sounds like what you're saying to
15 me bottom-line is there's an insurance issue. It'd be a lot better off for
16 the Defendant to cover the insurance issue by being LVS, LLC, which is
17 consistent with the history going back to 2005 anyway?

18 MR. JIMMERSON: That is my understanding, Your Honor.
19 And I --

20 THE COURT: Okay.

21 MR. JIMMERSON: -- but I also don't want to make a record
22 that would give the insurance company a defense, so understanding that
23 I am trying --

24 THE COURT: Well, yeah --

25 MR. JIMMERSON: -- to be judicious.

1 THE COURT: -- it's been your exist -- okay. I don't want to
2 hurt that, either. So LVS, LLC has been in existence since 2005 and
3 lawyers and chairmens of the board have made errors on that.

4 MR. JIMMERSON: They have and you see the documents
5 that that is true.

6 THE COURT: Okay.

7 MR. JIMMERSON: But again, I see it both sides and I would
8 be very concerned, if I was Plaintiff, which is why I've gone so far as to --

9 THE COURT: Okay. I get it.

10 MR. JIMMERSON: -- make this representation to you and
11 hopefully that would ease Mr. O'Malley and Mr. Bice and Mr. Pisanelli's
12 concerns.

13 THE COURT: Okay. One more thing then that came to mind
14 in looking at this last night and this morning. Would you be amendable
15 to having the verdict form simply say Las Vegas Sands?

16 MR. JIMMERSON: No, the answer is no. I would want the
17 verdict form to say LVS, LLC as -- in terms of the insurance.

18 THE COURT: But what if it just said Las Vegas Sands and I
19 granted your motion but as far as the jury is told, to avoid confusion on
20 are they a corporation -- why does the jury need to know whether they're
21 a corporation or an LLC?

22 MR. JIMMERSON: If the Plaintiffs do not care about that, I
23 don't believe we would, either, okay?

24 THE COURT: Okay. So in other words --

25 MR. JIMMERSON: I just would want the verdict -- excuse

1 me, the judgment, however, to be against LLC and not LVSC, with the
2 understanding that LVSC will stand behind in a written form the LVS,
3 LLC adverse judgment.

4 THE COURT: Okay. So you -- so again, you think there'd
5 be -- if you want to think about it or talk internally about it, no problem.
6 I'm just asking. If you know now, you can tell me, but as far as the jury is
7 concerned, if they're told the Defendant is Las Vegas Sands and that's all
8 they're told --

9 MR. JIMMERSON: Yeah. I don't --

10 THE COURT: -- they don't get the LL --

11 MR. JIMMERSON: -- see any issue on it, Judge, but let me
12 say this.

13 THE COURT: Yeah. Okay.

14 MR. JIMMERSON: I feel bad for prior counsel having made
15 the mistake and you know, so I don't want to make a mistake, either, but
16 I wouldn't see how it would matter to the jury at all.

17 THE COURT: Okay. Okay.

18 MR. JIMMERSON: I totally agree with the Court.

19 THE COURT: All right. Thanks.

20 MR. JIMMERSON: It does matter, however, in terms of who
21 responds to the money judgment.

22 THE COURT: Okay.

23 MR. JIMMERSON: And pays it.

24 THE COURT: Okay. Understood.

25 MR. JIMMERSON: Thank you.

1 THE COURT: Mr. O'Malley.

2 MR. O'MALLEY: Good morning, Your Honor. I was sitting
3 here quietly all morning just minding my own business enjoying the
4 back and forth and now it's my turn.

5 THE COURT: I'm glad you're doing this one. Nothing
6 against Bice, but you know --

7 MR. O'MALLEY: After a couple hours, Your Honor, I totally
8 understand your position. So yes, Your Honor, this was made aware --
9 brought to my attention by counsel for the Defense, I think a couple of
10 months ago, when they said to me oh, by the way, we'd like to substitute
11 the Defendant for somebody else and I said really? Isn't it late for that?
12 Who's this? Why are we doing it? This led to a series of calls between
13 me and Mr. Sauber and Mr. Jacobs and maybe Mr. Jimmerson was on
14 the phone. I don't remember -- where we talked this all through.

15 Here is my bottom-line concern. We have a Supreme Court
16 order based on a lengthy trial and a representation by formal counsel in
17 front of Your Honor and me that the right party, gosh darn, the right
18 party is LVSC. And we all said, well, if that's the right party, Mr. Peek,
19 then that's fine. It's going to be the right party. And that's what we did.
20 We went forward on that basis.

21 I examined Mr. Adelson. I asked him, is LVSC the successor
22 to LVSI? Oh, yes it is. And who should know better than the man whose
23 company it is? And then it goes up on appeal. No issue is made of this.
24 LVSC is the appellant in the record. LVSC is the folks that filed the brief.
25 The Supreme Court framed the issues toward LVSC. They did in the

1 opinion talk about LVSI, but of course, that's understandable, because
2 LVSI is LVSC, according to Peek and everybody else. So that's the same
3 company.

4 And now -- let's see. It would have been about 14 years into
5 the lawsuit. We -- I'm approached with the idea, well, let's substitute out
6 one company for the other. Let's find this other entity known as LVS,
7 LLC, not even a corporation, apparently, an LLC, that would come in its
8 place. Now, we all know LVSC, the corporation is a publicly held
9 corporation. Its financials are available on the SEC website to anybody
10 who's curious.

11 It is -- last time I looked, I think it's got \$42 billion in market
12 cap. Its revenue is about \$14 billion a year, so I think under any
13 legitimate inquiry, it is a large, solvent, healthy company. Just the kind
14 of company that can respond to a judgment of any type. And by the
15 way, Mr. Jimmerson is talking about a \$333 million judgment. Let's
16 don't forget the interest that goes on there for 14 years. So that's, in our
17 view, a large, large judgment.

18 THE COURT: Yeah, it's another 100 million or so --

19 MR. O'MALLEY: Oh, it probably doubles.

20 THE COURT: -- or how much?

21 MR. O'MALLEY: It's seven and a half percent now.

22 THE COURT: Okay.

23 MR. O'MALLEY: Back to the time of filing, so it would be
24 over 100 percent.

25 THE COURT: Okay. Well, there you go.

1 MR. O'MALLEY: So we're talking about a significant amount
2 of money, if the jury looks at the case the way we do.

3 THE COURT: Yeah.

4 MR. O'MALLEY: So I want to be sure that whoever is on the
5 other side of that judgment is there to satisfy it. And it is true -- Mr.
6 Jimmerson, I think said in his reply papers, they did send me a
7 spreadsheet that's filed with Nevada Gaming that I think is considered
8 confidential, so I won't ask about exact amounts, but which purported to
9 show at least as of about, I think a year ago -- it was 2017,
10 the -- I can't remember his assets, liabilities or an income statement.

11 I think it may have been an income statement of LVS, LLC.
12 And not surprisingly, it's smaller. Of course it's smaller. Of course it's
13 smaller. It's part of the whole. It's a component of LVSC --

14 THE COURT: Uh-huh.

15 MR. O'MALLEY: -- apparently. And I learned from
16 conversations Mr. Jacobs and Mr. Sauber and I think Ms. Spinelli that
17 some of the assets within the LVSC broader group that are reported on a
18 consolidated basis, some of those assets do reside with LVS, LLC. I think
19 it may be the actual properties here in Las Vegas. I think some of the
20 nongaming assets do.

21 THE COURT: Uh-huh.

22 MR. O'MALLEY: I think they told me that some of the
23 nongaming employees are there. I don't want to say a lot more, because
24 I don't know what's confidential and what's not in this realm.

25 THE COURT: Okay.

1 MR. O'MALLEY: But --

2 THE COURT: I don't want you to, either then, but let me ask
3 you this. What's the prejudicial effect of doing this thing?

4 MR. O'MALLEY: Well, they just told me the prejudicial effect
5 was I just bought a new lawsuit. If we are successful in -- against LVS,
6 LLC --

7 THE COURT: Uh-huh.

8 MR. O'MALLEY: -- and for some reason, it doesn't respond,
9 then they say they are willing to guarantee -- provide a guarantee by
10 LVSC, but a suit on a guarantee is just that, another lawsuit. What I
11 didn't hear them say, which was -- would be this. Keep LVSC as a party,
12 bring in LVS, LLC, if they wish. Stipulate today in writing or on the
13 record that they are jointly and severally liable for any judgment that
14 might be entered against either one of them. And then I haven't bought
15 a separate lawsuit. Then I think I'm protected. And since they were --

16 THE COURT: Yeah. I mean, that might also address the
17 other concern, the concern, the insurance concern.

18 MR. O'MALLEY: Yes. My concern. My big concern about
19 collectability.

20 THE COURT: Yeah.

21 MR. O'MALLEY: Now, on the insurance angle --

22 THE COURT: Okay.

23 MR. O'MALLEY: -- they did produce to me the underlying
24 insurance policies. They should have been produced a long time ago,
25 but we'll let that go. And there is an old D & O policy going back to these

1 early days. They say they have sworn to me there's no excess coverage.
2 There's a certain amount at issue. They went through the coverage
3 analysis with me. I do a lot of insurance work and I'll leave it to others to
4 advise them whether I think the coverage argument is very good or not,
5 but that's up to them.

6 But the bottom-line is, we shouldn't be prejudiced by what's
7 gone on so far. We certainly shouldn't be prejudiced by putting in a less
8 solvent defendant than we have today.

9 THE COURT: Okay. Let me just cut to the quick on this, if
10 there's such a thing in this trial. Mr. Jimmerson, would you agree to this
11 idea that I grant this request in part, so to speak, along the lines of what
12 Mr. O'Malley said. In other words, you could add LVS, LLC and then the
13 case caption will stay La -- it would just say Las Vegas Sands, I take it.

14 MR. O'MALLEY: I could say both.

15 THE COURT: Okay.

16 MR. O'MALLEY: You know, I would say the caption would
17 say Las Vegas Sand Corp/Las Vegas Sands -- or comma, Las Vegas
18 Sands, LLC.

19 THE COURT: Okay. All right.

20 MR. O'MALLEY: But then we have an agreement, a
21 stipulation of joint several liability.

22 THE COURT: Okay. That might solve your insurance, you
23 know, concern that correct it the way it should be.

24 MR. JIMMERSON: Yeah. My response is two-fold. Number
25 one is I don't know, so I'm not able to get give a response --

1 THE COURT: Okay.

2 MR. JIMMERSON: -- that you can count on today at this
3 moment in time. I would need 24 hours or 48 hours to respond, number
4 one. Number two, Mr. O'Malley, by his argument, certainly concedes
5 that we substituted in the wrong entity. When it came time to advise you
6 who was the successor of LVSI, it was not LVSC, which didn't exist in the
7 2001/2002 timeframe. It was LVS, LLC.

8 So even though we're trying to make a deal, we have the
9 wrong Defendant in this case and that's all that this is being seeking to
10 provide. On the larger issue about the nervousness by the Plaintiff,
11 which I fully would appreciate and would be the same way in which I
12 would not the Plaintiff to have to suffer. I can't answer the question --

13 THE COURT: Okay, well --

14 MR. JIMMERSON: -- with regard to that.

15 THE COURT: -- I guess I can wait for that, but --

16 MR. JIMMERSON: Yeah. I mean, I'd like to have an
17 opportunity --

18 THE COURT: -- do you want to say anything else?

19 MR. O'MALLEY: I also have a point, Your -- sorry. I didn't
20 mean to interrupt.

21 MR. JIMMERSON: No. I'm sorry. Go ahead, sir.

22 MR. O'MALLEY: I also have a point on the question of
23 recognizing it's the wrong party. I don't recognize it's the wrong party
24 and for this reason.

25 THE COURT: Uh-huh.

1 MR. O'MALLEY: It's not that I quarrel with any of the filings
2 that have been presented to the Court. I'm not aware of any kind of
3 contradictory filings. But when a company agrees that it is the successor
4 of a prede -- of another company, a predecessor within which its -- within
5 which it has privity, such as this -- it may not be the immediate
6 successor, but it may be the next one. It can be a successor. You can be
7 a successor by way of agreement.

8 And so at a minimum, that occurred when Sheldon Adelson
9 agreed it was the successor and after Mr. Peek informed us all and
10 induced our reliance that it was the successor. So I don't quarrel with
11 the idea that LVS, LLC may be a successor, but I suggest to Your Honor,
12 it is not, based on this record, the only successor and that Corps is also a
13 successor and fully liable for its debts.

14 MR. JIMMERSON: That's not an argument that was made in
15 the opposition and it's not a fair representation of corporate law. You
16 can't have somebody who wasn't around at the time somehow be a
17 successor because somebody makes a mistake. I totally understand the
18 position that Plaintiffs made. Mr. Adelson was in error. Mr. Peek was in
19 error and --

20 THE COURT: Okay.

21 MR. JIMMERSON: -- and you know, it happens. But the
22 corporate documents and the SEC filings made notice to the world, are
23 very clear --

24 THE COURT: Okay.

25 MR. JIMMERSON: -- that the successor was LVS, LLC, not

1 LVSC.

2 THE COURT: Okay. Here's my thought on it. The one party
3 in here that has interestingly enough, the most force and effect on me is
4 the Nevada Supreme Court. I mean, the judgment from the Nevada
5 Supreme Court on liability in this case is against LVSC and so to me,
6 that's the law of the case. And so to me, that's the law of the case and
7 that's the judgment.

8 We're here now to determine damages on that judgment and
9 so in the event, Mr. Jimmerson, you go back and talk to the powers that
10 be and you're willing to -- you know, if this resolves the insurance issue,
11 move to add LVS, LLC and have them, a co-party to the case jointly and
12 severally liable in the event there's a -- well, there'll be a judgment of
13 some sort, okay. I mean, a monet -- a damage award of some sort most
14 likely, that they're jointly and severally liable. It sounds like there'd be an
15 agreement to do that and have the case be Round Square v. LVSC and
16 LVS, LLC.

17 MR. JIMMERSON: If we were to do that, I would want to
18 reverse that, John. I would want it to be LVS, LLC, which was the first
19 successor an only successor and then -- and LVSC. I'm not -- just
20 suggesting that the --

21 THE COURT: But --

22 MR. JIMMERSON: -- to correct -- it should be the correction,
23 the correct one. That's all I'm saying.

24 THE COURT: Well --

25 MR. JIMMERSON: But they -- if we agree --

1 THE COURT: -- what order it's in.

2 MR. JIMMERSON: -- the jointly and severally would be
3 something we would agree to. I'm just saying too, that the primary
4 named Defendant should be the correct one, which was LVS, LLC.

5 THE COURT: Well, like I said, it's --

6 MR. O'MALLEY: Your Honor. --

7 THE COURT: -- my thought most of this, since it is a
8 discretionary item -- and if you look at the reason it's discretionary, it
9 seems to say that it doesn't matter what the name is for purposes of
10 collectability is the way I sort of interpret this. In other words, you can
11 sue a constituent entity under an old name even under this rule. And I
12 think that's designed to allow, of course, for the passage of time as
13 between the filing of the lawsuit and what happens on the corporate
14 name and all -- and existence and all that.

15 But anyway, here's what I'm really getting at. The Plaintiffs
16 are convincing me that there's at least the potentiality of some prejudice
17 here and that's enough for me, given that the joint is against, from the
18 Nevada Supreme Court, LVSC, that's sort of the law of the case. It's the
19 judgment and that's enough to deny this motion.

20 But I'm denying it with the caveat, as represented by the
21 Plaintiff's counsel that it's a stipulation offer, is what I'll take it to be that
22 if they come in and say we stipulate -- we would agree with the
23 stipulation offer to have LVSC LLC added and be jointly, severally liable
24 for any damage award then that -- so be it. That's what it will be based
25 upon your offer, but otherwise, I'm going to deny the motion.

1 MR. O'MALLEY: Thank you, Your Honor.

2 MR. PEEK: Your Honor, I would only add that that
3 stipulation, to the extent it's going to be considered in the record is far
4 more complicated, because of the potential prejudice to us on appeal,
5 number one, with one new party coming in claiming not to be bound by
6 the law of the case --

7 THE COURT: Well, maybe Mr. O'Malley --

8 MR. PEEK: -- in the original matter.

9 THE COURT: -- shouldn't have offered it, then.

10 MR. PEEK: And the other issue, Your Honor, is on a jury
11 verdict form --

12 THE COURT: Yeah.

13 MR. PEEK: -- we run the risk, if we have two different
14 defendants. Now.

15 THE COURT: So do you want to talk amongst yourselves
16 and --

17 MR. PEEK: Yes, please.

18 THE COURT: -- and reconsider what Mr. O'Malley just
19 offered?

20 MR. PEEK: Yes.

21 MR. BICE: We -- yes, we'll talk real quick. We think we can
22 solve it with what Mr. O'Malley offered.

23 THE COURT: Okay. Well go ahead. We'll be here.

24 MR. JIMMERSON: All right, Judge.

25 MR. O'MALLEY: Well, where I come from, Your Honor, a

1 card laid is a card played.

2 MR. JIMMERSON: So we'll prepare the order from the
3 protective order and Defendant will prepare the order from this morning.
4 Is that fair? Nobody's listening, but is that fair?

5 THE COURT: Well, we're not done with this morning yet.

6 MR. JIMMERSON: I'm sorry. We're still pending on it.

7 THE COURT: Yeah, we're seeing if something's going to
8 come about here.

9 MR. JIMMERSON: I see. I understand, Judge. Thank you. I
10 thought we were, because I'm going to need to have Ms. Spinelli and I
11 huddle.

12 THE COURT: Can you have Tara come in here with our
13 schedule for the week, please?

14 THE CLERK: Sure.

15 [Pause]

16 MR. O'MALLEY: Judge, I don't know if we're still on the
17 record or not.

18 THE COURT: Yeah. We're on the record. Go ahead.

19 MR. O'MALLEY: My excellent group of local counsel -- and
20 by the way, if I haven't said it before, I should say it now. Jim and -- Jim
21 and -- Jim Pisanelli and Todd Bice are two of the brightest lawyers I've
22 ever had the opportunity to work with anywhere, anytime and that holds
23 true today. And they have raised certain issues regarding prejudice that
24 frankly I had not considered.

25 THE COURT: Okay.

1 MR. O'MALLEY: Okay. So I think I'd better, with the Court's
2 indulgence, withdraw my effort of compromise here, pending further
3 discussions with my counsel. And we would be happen then --

4 THE COURT: Okay.

5 MR. O'MALLEY: -- to prepare the order on this motion.

6 THE COURT: All right. Well, if you're going to discuss the
7 issue, that's fine. Talk to Mr. Jimmerson about it, maybe before he goes
8 and figures out what he wants to do. Who knows, but --

9 MR. O'MALLEY: Yeah.

10 THE COURT: -- for now all I can do is deny the motion based
11 upon the Supreme Court order that has LVSC in the case as the party
12 responsible for liability and given that it's discretionary and given that
13 there's at least the specter of potential prejudice here.

14 MR. O'MALLEY: Thank you, Your Honor.

15 THE COURT: Consistent --

16 MR. O'MALLEY: I appreciate that ruling.

17 THE COURT: -- consistent with you taking the card played
18 and putting it back in the discard area.

19 MR. O'MALLEY: Back up my sleeve.

20 THE COURT: Yeah, back up your sleeve. Okay. So
21 everybody's -- he -- Mr. Jimmerson was saying who's going to prepare
22 orders.

23 MR. BICE: Yes.

24 MR. O'MALLEY: We'll do that one.

25 THE COURT: You're doing that one.

1 MR. O'MALLEY: Yeah.

2 THE COURT: And what about the other?

3 MR. JIMMERSON: We'll do the protective order one.

4 THE COURT: Okay. I brought Tara here, before we go real
5 quick. What's our schedule this week?

6 THE CLERK: Tomorrow morning we've got calendar.
7 Tomorrow afternoon we're open and Wednesday we are open and then
8 Thursday we have morning calendar and then we start our bench trial at
9 1:00 p.m. and then they have all day Friday as bench trial as well.

10 THE COURT: Okay. So can somebody from the Defense
11 relate that to those that are getting this doctor lined up?

12 MR. JIMMERSON: The answer's yes. Tomorrow and
13 Wednesday. Did I hear anything on Thursday?

14 THE CLERK: No. We've got morning calendar and a bench
15 trial starting at 1:00 and then that trial will continue, the bench trial
16 they've got all day on Friday.

17 THE COURT: All right. Let me tell you something that
18 nobody --

19 MR. JIMMERSON: Mr. Sauber and Mr. Jacobs have already
20 gone back to try to line that up, so --

21 THE COURT: Okay. Let me add to it. In the event we needed
22 Friday, I would make it happen, because a bench trial, I could tell those
23 lawyers I need an extra hours and just segue from the bench trial to you
24 guys.

25 MR. JIMMERSON: Okay.

1 THE COURT: So Friday's on the table, too.

2 MR. JIMMERSON: All right. Thank you.

3 MR. O'MALLEY: Thank you, Your Honor.

4 THE COURT: Okay. So you got Friday for the doctor, too.

5 MR. JIMMERSON: All right. Would Thursday morning not
6 be available?

7 THE COURT: Thursday morning is not available.

8 MR. JIMMERSON: And Thursday afternoon would not be
9 available, but Friday could be available. So Tuesday, Wednesday,
10 Friday. Is that my options right now if it's this week?

11 THE CLERK: That the Court's available?

12 MR. JIMMERSON: Yes, that the Court's available.

13 THE CLERK: Yes.

14 MR. JIMMERSON: All right. Thank you so much, Judge.

15 MR. O'MALLEY: And I thought we had discussed at the off
16 the record meeting, I think last week, that Wednesday might be a good
17 day to go through some of the designations and objections.

18 THE COURT: Yeah. That's -- go again, when we are
19 available this week?

20 THE CLERK: Yeah. We have tomorrow after I would say 1:00
21 and then all day Wednesday and if he wanted to make some time
22 available for you on Friday, depending on our bench trial.

23 MR. O'MALLEY: But Friday only for the doctor thing. Not for
24 the other stuff, okay?

25 THE CLERK: So tomorrow afternoon and all day Friday -- or

1 all day Wednesday.

2 MR. O'MALLEY: So shall we agree now to be here on
3 Wednesday --

4 MR. JIMMERSON: I'm sorry, John. I can't commit to that.
5 I'm not saying that that's impossible thing, but it wouldn't have been
6 my -- it's not my primary responsibility and I would have to fly
7 somebody from Washington for Wednesday, so I'm just asking --

8 MR. O'MALLEY: Okay.

9 MR. JIMMERSON: -- to make a phone call.

10 MR. O'MALLEY: I just, you know, want to get a smooth start.

11 THE COURT: So just let us know. You know we have some
12 business here. We have the designation issues with the various
13 depositions and we have now the one that came up today, the doctor
14 evidentiary hearing.

15 MR. O'MALLEY: Uh-huh.

16 THE COURT: So you know, I know there's a lot of work to be
17 done, but go about and do it and let us know when you want us to --
18 well, I just wanted to make sure she told you when we can actually do
19 this stuff, okay?

20 MR. JIMMERSON: Right. Of course.

21 THE COURT: Okay.

22 MR. JIMMERSON: That's so helpful.

23 THE COURT: That's -- we stand ready to receive.

24 MR. O'MALLEY: Thank you very much, Your Honor.

25 THE COURT: We apparently loss the toss on that.

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MR. O'MALLEY: Thank you, Your Honor.

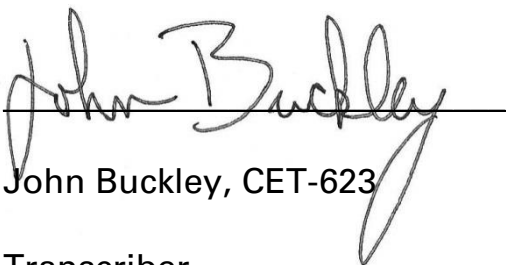
MR. JIMMERSON: Thank you for your time.

THE COURT: Have a good day.

[Proceedings concluded]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to the
best of my ability.

A handwritten signature in cursive script that reads "John Buckley". The signature is written over a solid horizontal line.

John Buckley, CET-623

Transcriber

Date: February 26, 2019